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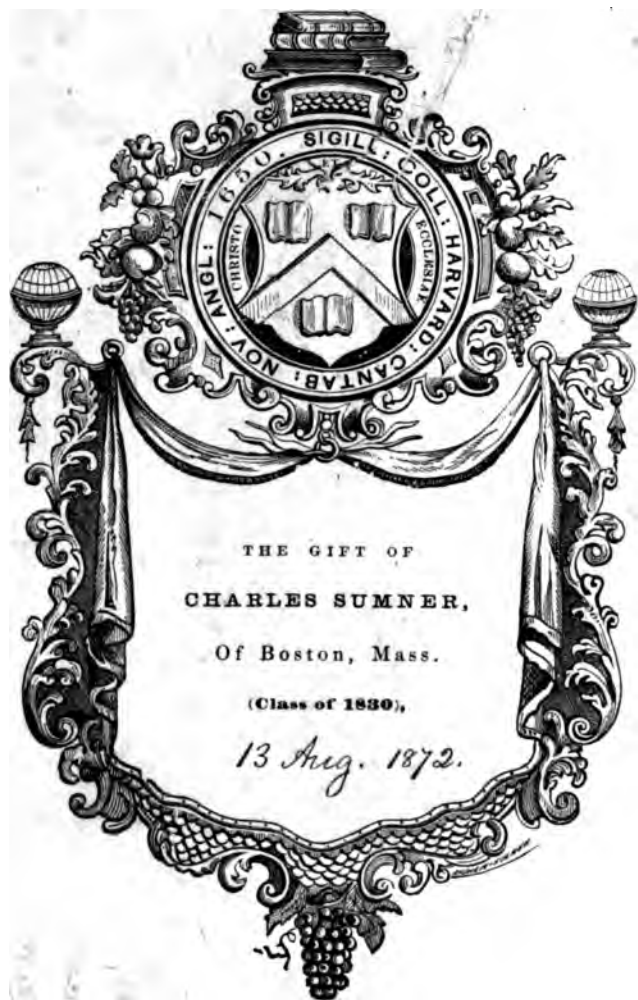
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(C. H. Johnson)







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A

D I G E S T

OF THE

Laws and Resolutions of Congress

RELATIVE TO

PENSIONS, BOUNTY LANDS, PAY OF THE ARMY, MILEAGE,  
HORSES OR OTHER PROPERTY LOST OR DESTROYED  
IN THE MILITARY SERVICE, EXPENSES OF  
VOLUNTEER FORCE, PATENTS, ETC.

TOGETHER WITH THE

OPINIONS OF THE ATTORNEYS GENERAL, AND DECISIONS OF THE SECRETARIES  
OF WAR AND INTERIOR, AND OF THE ACCOUNTING OFFICERS OF  
THE TREASURY THEREON, WITH FULL AND COMPLETE

FORMS OF APPLICATION,

SO ARRANGED AS TO FURNISH ALL THE INFORMATION THAT MAY BE DESIRED  
BY CLAIMANTS OR THEIR ATTORNEYS.

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BY C. W. BENNETT, ATTORNEY AT LAW.

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WASHINGTON:

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1872, Aug. 13.

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Gen. Chas. Sumner,  
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## INTRODUCTION.

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IN presenting this compilation of Laws, Forms, and Instructions relative to Pensions, Bounty Land, Pay of the Army, etc., to the public, the publisher deems but few remarks necessary as an introduction. He has been engaged for many years in the prosecution of claims, and his experience has taught him that a work of its character is wanted by the profession and others engaged in like business at a distance from the seat of government, where the rules of the various offices are not readily obtained, and where the advice of a professional agent cannot be procured, except at great expense, and with much delay.

The works heretofore published, relative to Pensions and Bounty Land, have not been calculated to assist the practitioner in the country, except so far as they contain the Acts of Congress, the rules of the offices, and occasional official forms. In very few instances are the official forms in compliance with the existing rules of the offices; as in most cases, after their adoption, many new rules and decisions have been made relative to proof, etc., to comply with which a new form is generally necessary. Attorneys filing claims prepared in accordance with the original official forms and instructions, in many instances find their claims rejected or suspended for want of compliance with some rule of which they are ignorant, and are thus occasioned delay, trouble, and probably expense.

The object of the publisher has been, to furnish a work, giving in detail all the Laws relative Pensions, Bounty Land, Pay, etc., with the official forms and instructions, as well as the various decisions under

## INTRODUCTION.

---

them; and to accompany each with such instructions as his experience has shown him to be necessary to be observed, and *original forms*, which have been prepared so as to be easily understood, and which comply *fully* with the rules of the offices as they now exist. In these particulars his work differs from that of any other compilation.

Relative to the portion of the work respecting PAY of the Army, etc., it is simply necessary to state, that *no work*, containing such information, *has ever been published*.

In nearly every instance, the *forms* contained in the work are those which have been used by the publisher in his business with success. It will be observed that the forms for each claim are all that are necessary to complete the case, thus obviating the necessity of frequent references and alteration of other forms.

The Pay Rolls of the Army and Navy of the Revolution, at the close of the war of 1812, and at the present time, have been compiled from the Journals of Congress, and subsequent official sources.

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PART I.

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PENSIONS

FOR SERVICE IN THE

WAR OF THE REVOLUTION.

# THEORY

The theory of the present work is based on the assumption that the system under consideration is a linear system. This assumption is valid for small signals and for systems that are not saturated. The system is described by the following differential equation:

$$\frac{d^2x}{dt^2} + 2\zeta\omega_n\frac{dx}{dt} + \omega_n^2x = \omega_n^2x_d$$

where  $x$  is the displacement,  $\zeta$  is the damping ratio,  $\omega_n$  is the natural frequency, and  $x_d$  is the displacement of the input signal. The input signal is assumed to be a sinusoidal wave of the form:

$$x_d = A \sin(\omega t)$$

where  $A$  is the amplitude and  $\omega$  is the angular frequency. The response of the system is given by:

$$x = \frac{A}{\sqrt{1 - 2\zeta\cos\phi + \zeta^2}} \sin(\omega t - \phi)$$

where  $\phi$  is the phase shift. The magnitude of the response is given by:

$$|x| = \frac{A}{\sqrt{1 - 2\zeta\cos\phi + \zeta^2}}$$

The phase shift is given by:

$$\phi = \tan^{-1} \frac{\zeta\omega}{\omega_n^2 - \zeta^2\omega^2}$$

The above equations show that the response of the system is a sinusoidal wave of the same frequency as the input signal. The magnitude of the response is a function of the damping ratio and the natural frequency. The phase shift is also a function of the damping ratio and the natural frequency.

The above equations are valid for small signals and for systems that are not saturated. For large signals, the system becomes nonlinear and the response is no longer sinusoidal. In this case, the theory of the present work is not applicable.

PENSIONS FOR SERVICE

IN THE

WAR OF THE REVOLUTION.


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VARIOUS Acts and Resolutions have been passed by Congress, providing pensions to persons engaged in the Military and Naval service during the war of the Revolution, and to the widows of those who have died. The first part of this work is devoted exclusively to the subject of pensions, and contains all the Acts and Resolutions of Congress providing them, together with the rules and regulations for their adjustment, adopted by competent authority, and a series of FORMS applicable to the different classes of claims. For the purpose of enabling persons interested to determine readily whether their claim is such as is provided for by law, and, if so, the act under which the claim should be prosecuted, the following brief summary of the laws, providing pensions on account of service in the war of the Revolution, is inserted; designating for what service, and to whom, and at what rates the pensions are allowed. Such suggestions, as to the mode of procuring record evidence of the service, as are deemed of importance, will be found under their appropriate head in the work. (See page 426.)

ACT OF MARCH 18, 1818.—This act provides pensions to commissioned officers at twenty dollars per month, and to non-commissioned officers and privates, at eight dollars a month, where the service was for not less than *nine months* in the Continental line.


ACT OF MAY 16, 1828.—This act provides pensions for service in the Continental line to the *close of the war* under an enlistment "*for the war*," to officers and soldiers, of their full pay in the line, not to exceed the full pay of a captain; to commence on the 3d of March, 1826, and to continue for life.

ACT OF JUNE 7, 1832.—This act provides pensions, for service in the Continental line, State Troops, Volunteers and Militia (not including the French Army), of full pay for *two years'* service, at the same rate for less service, not being *less* than *six months*, and not to exceed in any case the pay of a Captain, in other words, the *half-pay* for service not less than six months nor exceeding two years. To commence on March 4, 1831, and to continue for life.

 Service under this act, in the continental line, to be computed up to September 3, 1783, whenever it commenced before April 11, 1783.

Whenever a soldier, who would have been entitled to a pension under this act, died after March 4, 1831, and before March 4, 1832, the pension from March 4, 1831, to his death, is payable to his widow or children—see 2d section, act July 4, 1836, page 42.

ACT OF JULY 4, 1836. (3d SEC.)—This act provides pensions to the widows of such persons as would have been entitled to the benefits of the act of June 7th, 1832, whose marriage took place *before* the expiration of the service of their husbands, at the same rate their husbands would have been entitled to under the act of 1832. To commence on March 4th, 1831, and continuing during widowhood.

 Widows of those wars-men who entered the service before April, 1783, are entitled under this act if married *before* November 3, 1783, but the service is computed only to September 3, 1783, the date of the definite treaty of Peace. See act March 3, 1837, page 43; and refer to cases of Dorcas Blake, deceased, of Massachusetts, admitted under act of 1836, and Susanna Holbrook, of Connecticut, admitted under same act.

ACT OF JULY 7, 1838.—This act provides pensions, for similar service and at the same rates, to those widows whose marriage took place *before* January, 1794, for *five years* from March 4, 1836; continued under act of March 3d, 1843, from March 4, 1843, for *one year*; continued under act of June 7, 1844, from March 4, 1844, for *four years*; and under the act of February 2, 1848, from March 4, 1848, during widowhood.



JOINT RESOLUTION, JULY 1, 1848.—This Resolution provides that if the husbands of such widows had been pensioned, the evidence upon which they were pensioned should be considered conclusive of their service; and the widows should be pensioned at the same rate the soldier would be entitled to, if living.

ACT OF JULY 29, 1848.—This act provides pensions, for similar service, and at the same rates, to those widows whose marriage took place *before* the year 1800, commencing on March 4, 1848, and to continue during widowhood.

ACT OF FEBRUARY 3, 1853.—This act provides pensions, for similar service and at the same rates, to widows (whose husbands served in the army) whose marriage took place subsequent to January, 1800, to commence from the date of the act and continue during widowhood.

#### ARREARS OF PENSIONS, TO WHOM DUE.

Arrears of soldiers' pensions are payable: *first*, to their widows, if surviving at the time of the allowance (for arrears) being made; and, *second*, to their children, and *not* to grandchildren or other heirs.

If no widow is surviving at the time of the allowance of a soldier's arrears, the fact that the soldier had a wife, and the date of her death, must be proven, as also, the fact that the children claiming were recognized as his.

Arrears of widows' pensions are payable to their children; but not to grandchildren, or other heirs; and to entitle children to a widow's arrears, it is only necessary to prove that they are *her* children, and her only children surviving, without regard to their paternity.

Arrears of soldiers' pensions are payable, under the act of 1818, for any fractional period of less than six months between the last semi-annual payment and the date of their death. Under the acts of 1828 and 1832, from the time that the soldier *would have been entitled* to pension until the day of his death: excepting only such time as he may have drawn his pension. Under the acts granting pensions to widows,

arrears are payable to their children for all such pension moneys as they were entitled to, but did not receive.

No arrears are due, where the person in whose right they are claimed was *not living* at the *date of the act* granting the pension, nor are any *pensions* (except arrears as above) due to children of Revolutionary soldiers, or of their widows.

#### RATES OF PENSIONS.

With the exception of the Act of March 18, 1818, the preceding Acts, in providing the amount of pension to be allowed under them, refer to the full pay of the officer or soldier while in the service. To determine the rate of pension, reference is had to the rate of pay received by the person on account of whose service the pension is claimed. As various changes were made in the rate of pay during the war, reference should be had to the pay table commencing on page 337, which has been carefully compiled from the Journals of Congress, they being the only official evidence of the amount of pay, and of its increase and decrease during the continuance of the war. Such increase and decrease will appear in the table, with the dates of the same, and the amount at the close of the war, as far as the Journals contain the same.

For the service of an officer or soldier for *two* years, or more, the pension is computed at the rate of his pay per year. If the service was for eighteen months, the pension will be the pay for nine months per year. If the service was for twelve months, it will amount to *one half* of the pay per year. If for six months, it will amount to the *pay* for three months' service per year, or to one-quarter of the yearly pay. No service for less than six months entitles the claimant to a pension. Over six months and not exceeding two years' service, entitles at the rate above, months and days being computed in settling the pension.

## REVOLUTIONARY PENSIONS.


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ACT OF MARCH 18, 1818.

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THIS act was the first passed by Congress providing pensions on account of *service* in the war of the Revolution. It is still in legal existence, and embraces in its provisions, the officers, non-commissioned officers, musicians and privates of the army of the revolution, on the continental establishment; the officers of the hospital department and medical staff; together with the commissioned and non-commissioned officers, mariners, (sailors) and marines who served in the naval force in said war. Nine months' service is required to entitle the claimant to a pension, and the benefits of the act restricted to those, who at the date of its passage, were resident citizens of the United States, and who were at the time, or should afterwards, by reason of reduced circumstances, be in need of the assistance of the country for support.

The act requires that previous pensions should be relinquished—a declaration under oath be made and transmitted to the Secretary of War, (now of the Interior,) and that the pension should commence from the day of oath.

 No application should be made under this act for the reason, that the pension if allowed, will *commence from the completion of the proof*. No person could establish a claim, unless he proved nine months' service—the same service, if proved under the act of 7th June, 1832, would entitle the claimant to a pension (if a private of infantry) of \$30 a year from the 4th March, 1831. For these reasons it is not deemed necessary to insert forms and instructions relative to this act or the acts supplemental thereto.

## ACT OF MARCH 18, 1818.

AN ACT to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war.

APPROVED, MARCH 18, 1818.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every commissioned officer, non-commissioned officer, musician, and private soldier, and all officers in the hospital department and medical staff, who served in the war of the revolution until the end thereof, or for the term of nine months, or longer, at any period of the war, on the continental establishment; and every commissioned officer, non-commissioned officer, mariner, or marine, who served at the same time, and for a like term, in the naval service of the United States, who is yet a resident citizen of the United States, and who is, or hereafter, by reason of his reduced circumstances in life, shall be in need of assistance from his country for support, and shall have substantiated his claim to a pension in the manner hereinafter directed, shall receive a pension from the United States: if an officer, of twenty dollars per month during life; if a non-commissioned officer, musician, mariner, marine, or private soldier, of eight dollars per month during life: *Provided,* No person shall be entitled to the provisions of this act until he shall have relinquished his claim to every pension heretofore allowed him by the laws of the United States.

SEC. 2. *And be it further enacted,* That, to entitle any person to the provisions of this act, he shall make a declaration, under oath or affirmation, before the district judge of the United States of the district, or before any judge or court of record of the county, State, or Territory in which the applicant shall reside, setting forth, if he belonged to the army, the company, regiment, and line to which he belonged; the time he entered the service, and the time and manner of leaving the service; and, in case he belonged to the navy, a like declaration, setting forth the name of the vessel and particular service in which he was employed, and the time and manner of leaving the service, and shall offer such other evidence as may be in his power; and on its appearing, to the satisfaction of the said judge, that the applicant served in the revolutionary war as aforesaid, against the common enemy, he shall certify and transmit the testimony in the case, and the proceedings had thereon, to the Secretary for the Department of War, whose duty it shall be, if satisfied the applicant comes under the provisions of this act, to place such officer,

musician, mariner, marine, or soldier, on the pension list of the United States, to be paid in the same manner as pensions to invalids who have been placed on the pension list are now paid, and under such restrictions and regulations, in all respects, as are prescribed by law.

SEC. 3. *And be it further enacted*, That every pension, by virtue of this act, shall commence on the day that the declaration under oath or affirmation, prescribed in the foregoing section, shall be made.

SEC. 4. *And be it further enacted*, That, from and after the passage of this act, no sale, transfer, or mortgage, of the whole, or any part, of the pension payable in pursuance of this act, shall be valid; and any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

The act of March 18, 1818, continued in force until the passage of the act of the 1st May, 1820, which provides that no person shall receive a pension after payment of that due on the 4th March, 1820, unless he exhibits a schedule of his whole estate and income, (his necessary clothing and bedding excepted), which schedule shall be in the form of an oath, and be deposited with the clerk of the court, a certified copy of the schedule and oath, with the opinion of the court, to be delivered to the Secretary of War. The Secretary of War was directed to strike from the pension list the names of persons who, in his opinion, were not in indigent circumstances.

AN ACT in addition to an act, entitled "An act to provide for certain persons engaged in the land and naval services of the United States in the revolutionary war," passed the eighteenth day of March, one thousand eight hundred and eighteen.

APPROVED, MAY 1, 1820.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, no person who now is, or hereafter may be, placed on the pension list of the United States, by virtue of the act, entitled "An act to provide for certain persons engaged in the land and naval service of the United States, in the revolutionary war," passed on the eighteenth day of March, one thousand eight hundred and eighteen, shall, after the payment of that part of the pension which became due on the fourth day of March, one thousand eight hundred and

twenty, continue to receive the pension granted by the said act, until he shall have exhibited to some court of record, in the county, city, or borough, in which he resides, a schedule, subscribed by him, containing his whole estate and income, (his necessary clothing and bedding excepted,) and shall have (before the said court or some one of the judges thereof,) taken and subscribed, and produced to the said court, the following oath or affirmation, to wit: I, A. B. do solemnly swear or affirm, (as the case may be), that I was a resident citizen of the United States on the eighteenth day of March, one thousand eight hundred and eighteen, and that I have not, since that time, by gift, sale, or in any manner whatever, disposed of my property, or any part thereof, with intent thereby so to diminish it as to bring myself within the provisions of an act of Congress, entitled "An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war," passed on the eighteenth day of March, one thousand eight hundred and eighteen; and that I have not, nor has any person in trust for me, any property, or securities, contracts, or debts, due to me; nor have I any income, other than what is contained in the schedule hereto annexed, and by me subscribed: Nor until such person shall have delivered, or caused to be delivered, to the Secretary of War, a copy of the aforesaid schedule and oath or affirmation, certified by the clerk of the court to which the said schedule was delivered, together with the opinion of the said court, also certified by their clerk, of the value of the property contained in the said schedule: *Provided*, That, in every case in which the pensioner may be insane, or incapable of taking an oath, the court may receive the said schedule, without the aforesaid oath or affirmation, from the committee, or other person authorized to take care of such person.

SEC. 2. *And be it further enacted*, That the original schedule and oath or affirmation shall be filed in the clerk's office of the court to which the schedule and oath or affirmation aforesaid shall be exhibited; and any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

SEC. 3. *And be it further enacted*, That, on the receipt of the copy of the schedule and oath or affirmation aforesaid, it shall be the duty of the Secretary of the War Department to cause to be struck from the list of pensioners under the said act the name of such person, in case the said person shall not, in his opinion, be in such indigent circumstances as to

be unable to support himself without the assistance of his country: *Provided*, That every person who shall have been placed on the pension list in consequence of disability from wounds received in the revolutionary war, and who shall have relinquished such pension in order to avail themselves of the benefit of the provisions of the act to which this is an amendment, who, by virtue of this section, may be stricken from the pension list, shall be forthwith restored to the pension so relinquished.

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The acts of March 18, 1818, and of May 1, 1820, were amended by the act of March 1, 1823, so as to authorize the Secretary of War to restore to the list such pensioners as had been or might be stricken off by the act of May 1, 1820, upon certain conditions. It provides also, that a judge might attend at the dwelling of such person as should be unable to appear in court, to make his schedule. It also provides that no pension should commence previous to the passage of the act, and other pensions only from the completion of the proof necessary to establish the claim.

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AN ACT supplementary to the acts to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war.

APPROVED, MARCH 1, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of War be, and he is hereby, authorized and required to restore to the list of pensioners the name of any person who may have been, or hereafter shall be stricken therefrom, in pursuance of the act of Congress, passed the first day of May, one thousand eight hundred and twenty, entitled "An act in addition to an act, entitled 'An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war,'" passed the eighteenth day of March, one thousand eight hundred and eighteen, if such person, so stricken from the list of pensioners, has heretofore furnished, or hereafter shall furnish, evidence, in pursuance of the provisions of said act, to satisfy the Secretary of War that he is in such indigent circumstances as to be unable to support himself without the assistance of his country, and that he has not disposed of or transferred his property, or any portion thereof, with a view to obtain a pension.

SEC. 2. *And be it further enacted,* That when any person, coming within the provisions of the acts to which this is supplementary, shall, by reason of bodily infirmity, be unable to attend in the court to make his schedule, and furnish the evidence by said acts required, it shall be lawful for any judge or justice of a court of record in the district, city, county, or borough, in which such person resides, to attend at his place of abode, and receive his schedule and oath or affirmation, and the said judge or justice shall certify that said applicant was, from bodily infirmity, unable to attend such court; which schedule and oath or affirmation, and certificate, shall, by said judge or justice, be produced in the court of which he is judge; and the opinion of said court, of the value of the property contained in said schedule, shall be entered thereon, and certified by the clerk of said court; and such schedule shall be valid for all the purposes contemplated by the acts aforesaid.

SEC. 3. *And be it further enacted,* That no pension hereafter to be allowed on claims or schedules heretofore filed under the act or acts to which this act is a supplement, or under the provisions of this act, shall commence before the passage thereof; and all other pensions hereafter to be allowed, under the acts aforesaid, shall commence from the time of completing the proof.



## REVOLUTIONARY PENSIONS.

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ACT OF MAY 15, 1828.

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THE act of 15th May, 1828, provides that each of the surviving officers of the revolutionary army in the continental line who were entitled to half-pay, under the resolve of 21st October, 1780, viz :

“IN CONGRESS, *October 21, 1780.*

*“Resolved, That the officers who shall continue in the service to the end of the war, shall also be entitled to half-pay during life, to commence from the time of their reduction.”*

Shall receive full pay according to their rank in the line, not to exceed the full pay of a captain, from the 3d March, 1826, during his natural life. Moneys received by officers entitled under this act, since 3d March, 1826, to be deducted and all other pensions to cease.

AN ACT for the relief of certain surviving officers and soldiers of the army of the revolution.

APPROVED, MAY 15, 1828.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving officers of the army of the revolution, in the continental line, who was entitled to half-pay by the resolve of October twenty-first, seventeen hundred and eighty, be authorized to receive, out of any money in the Treasury not otherwise appropriated, the amount of his full pay in said line, according to his rank in the line, to begin on the third of March, one thousand eight hundred and twenty-six, and to continue during his natural life: *Provided,* That under this act, no officer shall be entitled to receive a larger sum than the full pay of a captain in said line.

SEC. 2. *And be it further enacted,* That whenever any of said officers has received money of the United States, as a pensioner, since the third day of March, one thousand eight hundred and twenty-six, aforesaid, the sum so received shall be deducted from what said officer would otherwise be entitled to under the first section of this act; and every pension to which said officer is now entitled shall cease after the passage of this act.

SEC. 3. *And be it further enacted,* That every surviving non-commissioned officer, musician, or private, in said army, who enlisted therein for and during the war, and continued in service until its termination, and thereby became entitled to receive a reward of eighty dollars, under a resolve of Congress, passed May fifteenth, seventeen hundred and seventy-eight, shall be entitled to receive his full monthly pay in said service, out of any money in the treasury not otherwise appropriated; to begin on the third day of March, one thousand eight hundred and twenty-six, and to continue during his natural life: *Provided,* That no non-commissioned officer, musician, or private, in said army, who is now on the pension list of the United States, shall be entitled to the benefits of this act.

SEC. 4. *And be it further enacted,* That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer or soldier entitled thereto, or to their authorized attorney, at such places and days as said Secretary may direct; and that no foreign officer shall be entitled to said pay, nor shall any officer or soldier receive the same, until he furnish to said Secretary satisfactory evidence that he is entitled to the same in conformity to the provisions

of this act; and pay allowed by this act shall not, in any way, be transferable or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer or soldier entitled to the same by this act.

SEC. 5. *And be it further enacted*, That so much of said pay as accrued by the provisions of this act before the third day of March, eighteen hundred and twenty-eight, shall be paid to the officers and soldiers entitled to the same, as soon as may be, in the manner and under the provisions before mentioned; and the pay which shall accrue after said day shall be paid semi-annually, in like manner, and under the same provisions.

The second section of the act, requires that "any money which the officer had received as a pension should be deducted from the amount to which he was entitled under this act."

Invalid pensioners, being *officers*, were relieved from this deduction by act of May 31, 1830, viz :

AN ACT to amend the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution."

APPROVED MAY 31, 1830.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the second section of the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved the fifteenth of May, one thousand eight hundred and twenty-eight, shall not be construed to embrace invalid pensioners, and that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

Invalid pensioners, being *soldiers*, were relieved from this deduction by act of July 14, 1832, viz :

AN ACT to amend the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution."

APPROVED, JULY 14, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the second section of the act entitled "An act for the relief of certain surviving officers and soldiers of the army of the revolution," approved the fifteenth day of May, one thousand eight hundred and twenty-eight, shall not be construed

to embrace invalid pensioners; and that the pension of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

This act extends to field and line officers, major and brigadier generals, directors of the hospital, chief physicians, and surgeons of the army and hospital, hospital physicians, surgeons, purveyors, apothecaries, and regimental surgeons. All other staff officers are not entitled to its benefits.

By the decision of Mr. Woodbury, the Secretary of the Treasury, surgeons are only entitled to infantry captain's pay, under the act of May 15, 1828.

The act of May 31, 1830, as well as that of July 14, 1832 above, amends the act of 1828, so that invalid pensions shall not be embraced in the operation of the second section.

Under the act of May 15, 1828, officers of the continental line of the army of the revolution, who were entitled to half-pay under the resolve of October 21, 1780, who were living on the 15th May, 1828, were entitled to full pay from March 3, 1826, to the date of their death.

In case the officer died after May 15, 1828, thus entitled, without having applied for and received the amount to which he was entitled, and left a widow surviving him, she, if living, can apply for and receive the amount.

In case such widow is dead, leaving children now surviving, the children, or an executor, or administrator for them, can apply for such amount.

As there can be but few unsettled claims under this act, it is not deemed necessary to insert a set of forms applicable to each class of claimants. The following directions, as to the mode of making up the claim, will suffice:—

The officer, widow, children, or representative, as the case may be, should go before a Court of Record, in open court, and make a declaration in form of an affidavit, stating their names in full, their ages and place of residence, their relation to the officer, or soldier, with his name, grade, or rank while in the army, the company and regiment to which he belonged, and such particulars relative to his service as

may be known, and claim the benefit of the act of May 15, 1828. In case the officer received his commutation, the fact should be noted. If not, it should be so stated. If the application is based upon the service of a non-commissioned officer or private, it should be mentioned in the declaration whether or not he received his reward of eighty dollars.

The date of the soldier's death must be stated; and in case he left a widow, her name, the date of her death, and the names and residence of the surviving children. This should be accompanied by the certificate of a Court of Record, showing the date of the officer's death, the date of his widow's death, and the number and names of the surviving children, and the name of the executor or administrator, in case one has been appointed by competent authority. In case this last certificate is based upon testimony presented to the court, such testimony should be annexed to the certificate. This declaration and certificate should be filed in the Pension Office, accompanied by such commission, or documentary evidence of service, as may be in the possession of the parties claiming.



## REVOLUTIONARY PENSIONS.

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ACT OF JUNE 7, 1832.

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The act of 7th June, 1832, provides pensions for the officers and soldiers of the continental line, (not embraced in the preceding acts of 18th March, 1818, and 15th May, 1828,) the State troops, Indian spies, volunteers and militia, and the officers, seamen, and marines of the navy, who served a period of six months, in one or more terms, in the war of the revolution.

All who served *two years*, are entitled to full pay, according to their rank, not to exceed a captain's pay. All who served *less* than two years, and *not less* than six months, are entitled to an annuity proportioned to the term of service. None are entitled whose service, in the aggregate, was less than six months. In case the officer or soldier served in different grades, he is entitled to the benefit of such grades in the adjustment of his pension. Foreign officers are not entitled.

It is under this act that the services of the volunteers and militia are recognized, and under which most of the claims now pending in the Pension Office, are being prosecuted. There have been very many decisions, relative to the operation of this act, issued by proper authority: all of which, deemed in any manner important to a proper understanding of the practice of the office, and the rights of parties claiming, are inserted, following the law.

As it is the desire of the publisher, that his work may be of *practical* benefit to parties interested, it is not deemed necessary to remark upon the various decisions, but to invite attention to them, and follow them with such forms of declaration, suggestions as to proof of service, and instructions how to proceed, as will enable claimants to draw up the papers necessary to form their claims, and to prosecute the same in the Pension Office to an adjustment.

AN ACT supplementary to the " Act for the relief of certain surviving officers and soldiers of the revolution."

APPROVED, JUNE 7, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That each of the surviving officers, non-commissioned officers, musicians, soldiers, and Indian spies, who shall have served in the continental line, or State troops, volunteers or militia, at one or more terms, a period of two years, during the war of the revolution, and who are not entitled to any benefit under the act for the relief of certain surviving officers and soldiers of the revolution, passed the fifteenth day of May, eighteen hundred and twenty-eight, be authorized to receive, out of any money in the treasury not otherwise appropriated, the amount of his full pay in the said line, according to his rank, but not exceeding in any case the pay of a captain in the said line; such pay to commence from the fourth day of March, one thousand eight hundred and thirty-one, and shall continue during his natural life; and that any such officer, non-commissioned officer, musician, or private, as aforesaid, who shall have served in the continental line, State troops, volunteers, or militia, a term or terms, in the whole less than the above period, but not less than six months, shall be authorized to receive out of any unappropriated money in the treasury, during his natural life, each according to his term of service, an amount bearing such proportion to the annuity granted to the same rank for the service of two years, as his term of service did to the term aforesaid; to commence from the fourth day of March, one thousand eight hundred and thirty-two.

SEC. 2. *And be it further enacted,* That no person, receiving any annuity or pension under any law of the United States providing for revolutionary officers and soldiers, shall be entitled to the benefits of this act, unless he shall first relinquish his further claim to such pension; and in all payments under this act, the amount which may have been received under any other act, as aforesaid, since the date at which the payments under this act shall commence, shall first be deducted from such payment.

SEC. 3. *And be it further enacted,* That the pay allowed by this act shall, under the direction of the Secretary of the Treasury, be paid to the officer, non-commissioned officer, musician, or private entitled thereto, or his or their authorized attorney, at such places and times as the Secretary of the Treasury may direct, and that no foreign officer shall be



entitled to said pay, nor shall any officer, non-commissioned officer, musician, or private, receive the same until he furnish the said Secretary satisfactory evidence that he is entitled to the same, in conformity to the provisions of this act: and the pay hereby allowed shall not be in any way transferable or liable to attachment, levy, or seizure, by any legal process whatever, but shall inure wholly to the personal benefit of the officer, non-commissioned officer, musician, or soldier entitled to the same.

SEC. 4 *And be it further enacted*, That so much of the said pay as accrued before the approval of this act, shall be paid to the person entitled to the same as soon as may be, in the manner and under the provisions above mentioned; and the pay which shall accrue thereafter, shall be paid semi-annually, in the manner above directed; and, in case of the death of any person embraced by the provisions of this act, or of the act to which it is supplementary, during the period intervening between the semi-annual payments directed to be made by said acts, the proportionate amount of pay which shall accrue between the last preceding semi-annual payment and the death of such person, shall be paid to his widow, or if he leave no widow to his children.

SEC. 5. *And be it further enacted*, That the officers, non-commissioned officers, mariners, or marines, who served for a like term in the naval service, during the revolutionary war, shall be entitled to the benefits of this act, in the same manner as is provided for the officers and soldiers of the army of the revolution.

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The second section of the act was amended by act of February 19th, 1833, so that an *invalid* pensioner need not on applying for the benefit of this act, relinquish his pension, nor should payments under any other act be deducted from payments under that of 7th June, 1832, viz:

AN ACT to amend an act entitled "An act supplementary to an act for the relief of certain surviving officers and soldiers of the revolution."

APPROVED, FEBRUARY 19, 1833.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the second section of the act entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," approved the 7th day of June, one thousand eight hundred and thirty-two, shall not be construed to embrace invalid pensioners; and that the

pensions of invalid soldiers shall not be deducted from the amount receivable by them under the said act.

The act of 7th June, 1832, was further amended so as to allow as service, periods of *imprisonment*, and by a subsequent decision, the time during which an officer or soldier was on *parole*, is also allowed:

Resolution in relation to the execution of an act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution.

APPROVED, JULY 14, 1832.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in the execution of the act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution, approved June seventh, one thousand eight hundred and thirty-two, the time of imprisonment as a prisoner of war shall be taken and computed as a part of the period of service.

A Resolution in relation to the execution of the act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution."

APPROVED, MARCH 2, 1833.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in the execution of the act supplementary to the "Act for the relief of certain surviving officers and soldiers of the revolution," approved June seventh, one thousand eight hundred and thirty-two, wherever it shall be made to appear that any applicant for a pension under said act entered the army of the revolution, in pursuance of a contract with the Government made previous to the eleventh day of April, one thousand seven hundred and eighty-three, and continued in service until after that period, it shall be the duty of the Secretary of War to compute the period of any such applicant's service, from the time he then entered the army, and until the date of the definitive treaty of peace, and to allow him a pension accordingly.

PRIVATEERSMEN.—Persons who served on board of privateers are not embraced in the above act. The language of the act applies to those, who were in the immediate service of the government, and formed a part of the public naval force.—*Opinion Atty. Genl.*, July 21, 1832.

FOREIGN OFFICERS.—The first section of the act of 7th June, 1832, embraces all surviving officers, musicians, soldiers, and Indian spies, who served in the continental line, state troops, volunteers and militia, irrespective of their places of residence, *except foreigners* who held *commissions* in the American service.—*Opinion Atty. Genl.*, Oct. 27, 1832.

**RANK OR GRADES OF SERVICE.**—In case an applicant has served in different grades for a time sufficient to entitle him to a pension, the pension must be graduated by the respective terms of service in each grade, commencing with the highest.—*Opinion Atty. Genl., Oct. 27, 1832.*

**FORMER PENSION.**—The Pension Act of 1832 does not exclude those who may have received pensions under other acts of Congress, where the provisions of this act are more favorable to their interest: thus, a pensioner under the act of 1828 may relinquish the benefits of that act and claim under this.—*Opinion of Atty. Genl. as follows:*

**ATTORNEY GENERAL'S OFFICE, May 18, 1833.**

**SIR:** In reply to your letter of the 16th instant, I have the honor to state that, by a literal construction of the first section of the act of 1832, every officer who was entitled to a pension under the act of May 15, 1828, would be excluded from a pension under the act of 1832; and if such a construction were adopted, an officer who had served to the end of the war as ensign, and who, previously or during the time that he was ensign, filled the office of commissary, would be excluded from a pension under the last mentioned law.

But, looking at the whole act, it appears that those who were on the pension list of 1828 were not excluded on the ground that their claims were less meritorious than those of others; but they were excluded because, being entitled under the act of 1828 to as much as they could receive under the act of 1832, it was deemed useless to make the same provisions over again in their favor. The 3d section of the law shows that it was not designed to exclude any of those who had pensions under other acts of Congress were the provisions of the act of 1832 were more favorable to their interests. I understand that a commissary is within the act of 1832, under the construction it has received at the War Department. If the commissary, therefore, had held no rank in the line, he would be entitled to his pension, because he was not provided for by the act of 1828. Did the law intend to draw a distinction between persons who had performed the same description of service, and to give to one what was refused to another for the like service? I think not: such a discrimination would have no foundation in justice. And it would, I think, be departing from the spirit and meaning of the law, to exclude one commissary from the act of 1832, because he had been an ensign; and give it to another, who had performed the same duty, but had held no rank in the line. The exclusive words in the 1st section ought to be confined to cases in which the party claims in the same character in which he is entitled under the act of 1828, and for the same description of service.

And as, in the case you state, the applicant was not entitled to a pension as commissary under the law of 1828, he is not excluded from a pension on account of services in that character under the act of 1832, and is entitled to the pension as commissary, upon relinquishing his claim as ensign.

R. B. TANEY.

#### To the SECRETARY OF WAR.

INVALID PENSIONERS previous to the act of 18th March, 1818, who relinquished their pensions as invalids, in order to obtain the benefit of that act, cannot, since the act of 19th February, 1833, receive a pension under act of 7th June, 1832, and have a revival of their pensions as invalids.

By the terms "Invalid Pensioners" and "Invalid Soldiers," used in the amendatory law of 1833, Congress meant those persons only, who were borne as invalid soldiers on the invalid pension rolls: those not so borne on those rolls cannot be considered within the law.

There is no provision of law to authorize the transfer of their names from the rolls of pensioners under act of 1818, to the Invalid Pension Roll on which they originally stood.—*Opinion of Attorney General, February 27, 1834.*

DESERTION.—By the Act of Desertion all claims to bounty land, pay, pension, and every gratuity is forfeited.—*Secy. of War, 27 June, 1843.*

RANK.—Inferiority of rank is not counterbalanced by length of service.

*Opinion of Attorney General, May 2, 1834.*

Components of the army are enlisted and borne on the muster rolls: mechanics employed, but not enrolled, are not components of the army.

#### DEPARTMENT OF INTERIOR, July 18, 1849.

It is not sufficient that a man should be employed in a mechanical occupation by the Government to make him an artificer of the army.

The law (act June 7, 1832) does not contemplate such persons as these; but those only who formed a component part of the army, and were not only *mechanics*, but were *enlisted* also as *soldiers*.

T. EWING.

#### FORM OF DECLARATION AND REGULATIONS

ADOPTED BY THE SECRETARY OF WAR, AND TO BE USED AND OBSERVED  
IN CASES WHERE THE SOLDIER IS THE APPLICANT.

The following regulations have been adopted by the Secretary of War, for carrying into effect the act of Congress, passed June 7, 1832, entitled "An act supplementary to 'An act for the relief of the surviving officers and soldiers of the revolution.'"

This law has been construed to extend as well to the line as to every branch of the staff of the army, and to include under the terms "Continental Line," "State Troops," "Militia," and "Volunteers," all persons enlisted, draughted, or who volunteered, and who were bound to military

service, but not those who were occasionally employed with the army upon civil contracts, such as clerks to commissaries and to storekeepers, &c., teamsters, boatmen, &c.

Four general classes of cases are embraced in this law :

1. The Regular Troops.
2. The State Troops, Militia and Volunteers.
3. Persons employed in the Naval Service.
4. Indian Spies.

As rolls of the regular troops in the revolutionary war exist in this department, all persons claiming the benefit of this law as officers, non-commissioned officers, musicians, or privates, will, in the first instance, make application by transmitting the following declaration, which will be made before a Court of Record of the county where such applicant resides. And every court having by law a seal and clerk is considered a Court of Record.

#### DECLARATION.

In order to obtain the benefit of the Act of Congress of the 7th June, 1832.  
 STATE, TERRITORY, OR DISTRICT OF } ss.  
 COUNTY OF.....

On this.....day of.....personally appeared the.....of the.....  
 .....A. B. a resident of.....in the county of.....and State,  
 Territory, or District of.....aged.....years, who being first duly sworn  
 according to law, doth on his oath make the following declaration, in order to  
 obtain the benefit of the provision made by the act of Congress, passed June 7th,  
 1832. That he enlisted in the army of the United States in the year.....,  
 with.....and served in the.....regiment of the.....line, under the  
 following officers :

[Here set forth the names and rank of the field and company officers; the  
 time he left the service; (and if he served under more than one term of enlist-  
 ment, he must specify the particular period, and rank and names of his officers;) the town or county and State, in which he resided when he entered the service; the battles, if any, in which he was engaged, and the country through which he marched.]

He hereby relinquishes every claim whatever to a pension or annuity, except the present; and he declares that his name is not on the Pension Roll of any Agency in any State, or (if any) only on that of the Agency in the State of....

Sworn to and subscribed the day and year aforesaid.

A. B.

[And then will follow the Certificate of the Court.]

And the said Court do hereby declare their opinion that the above named applicant was a revolutionary soldier, and that he served as he states.

I.....of the Court of.....do hereby certify, that the foregoing contains the original proceedings of the said Court in the matter of the application of.....for a pension.

In testimony whereof, I have hereunto set my hand and seal of office, this.....day of.....&c.

If, on examination of the proper record, the names of applicants, making such declaration, cannot be found, they will receive detailed instructions respecting the nature and form of the testimony they must produce to secure their being placed on the Pension Roll. As the presumption will, in such case, be against the applicants, in consequence

of the omission of their names in the muster-rolls, they will be required to furnish, as near as may be, the same evidence as has heretofore been required by the regulations and practice adopted for carrying into effect the act of Congress of March 18, 1818, and the acts supplementary thereto ; with such relaxations as have been from time to time sanctioned by the Department, on account of the rapid decrease of the survivors of the revolutionary army, and the consequent difficulty of procuring direct positive testimony in every case.

Whenever an officer or non-commissioned officer is now in the receipt of a pension, he should make application, if entitled to the benefit of this act, by letter merely, setting forth his rank, and the regiment, corps, or vessel, in which he served, and his present place of residence. His pension certificate must accompany his letter.

In those cases where the applicants have once been on the Pension Roll, under the act of March 18, 1818, and have been dropped therefrom on account of property, or from any other reason, or where application has been made under the act of May 15, 1828, and the evidence of his service is in the Departments, or having made application and proof of service, and having been rejected, instead of the above declaration, they will make a statement, setting forth, under oath, their having been previously on the Pension Roll, and their having been struck from the same, showing their rank, the regiment, corps, or vessel, in which they served, their present place of residence, and their place of residence when the first application was made, or of their application under the act of 15th May, 1828.

In a case where a claimant may make personal application at this Department, and can produce satisfactory proof of service, and of his identity also, at the seat of government, he may make his declaration before a justice of the peace.

The case of the State troops, volunteers, and militia, is different. There are in the Department no rolls of the State troops, except those of Virginia ; and no rolls of the militia.

Applicants who served in the State troops of Virginia, and applicants who served in the militia of New Hampshire, will be required to produce the same proof as is prescribed for those who served upon the continental establishment. But with respect to the other State troops and militia, there is no record to advert to, and no presumption to be rebutted. The nature of the case, therefore, demands a different rule of proceeding.

Every applicant who claims a pension by virtue of service in the State troops, volunteers, or militia, except as is above provided, will make and subscribe the following declaration :

DECLARATION.

In order to obtain the benefit of the Act of Congress, passed June 7, 1832.

STATE, TERRITORY, OR DISTRICT OF }  
COUNTY OF.....} ss.

On this.....day of.....personally appeared in open Court, before the Court of.....now sitting, A. B., a resident of.....in the County of.....and State, Territory, or District of.....aged.....years, who being first duly sworn according to law, doth on his oath, make the following declaration, in order to obtain the benefit of the act of Congress, passed June 7, 1832.

That he entered the service of the United States under the following named officers, and served as herein stated :

[Here set forth the names and rank of the field and company officers ; the day (if possible) and the month and year when the claimant entered the service, and the time when he left the same ; (and, if under more than one engagement, he must specify the particular periods, and the rank and names of his officers ;) the town, the county, or State, in which he resided when he entered the service ; whether he was draughted, was a volunteer or substitute ; the battles, if any, in which he was engaged ; the country through which he marched ; the continental regiments or companies with which he served ; and the names of some of the regular officers whom he knew, together with such further particulars as may be useful in the investigation of his claim ; and also, if the facts be so, that he has no documentary evidence, and that he knows of no person, whose testimony he can procure, who can testify to his service.]

He hereby relinquishes every claim whatever to a pension or annuity, except the present, and declares that his name is not on the Pension Roll of the Agency of any State, or (if any) only on that of the Agency of the State of....

Sworn to and subscribed the day and year aforesaid.

C. D.

And then will be annexed the following certificate :

We, A. B., a clergyman, residing in the.....and C. D., residing in (the same,) hereby certify, that we are well acquainted with....., who has subscribed and sworn to the above declaration : that we believe him to be.....years of age ; that he is reputed and believed, in the neighborhood where he resides, to have been a soldier of the Revolution, and that we concur in that opinion.

Sworn to and subscribed the day and year aforesaid.

[And then will follow the certificate of the Court.]

And the said Court do hereby declare their opinion after the investigation of the matter, and after putting the interrogatories prescribed by the War Department, that the above named applicant was a Revolutionary Soldier, and served as he states. And the Court further certifies, that it appears to them that A. B.,.....who has signed the preceding certificate, is a clergyman, resident in the.....and that C. D., who has signed the same, is a resident in the.....and is a credible person, and that their statement is entitled to credit.

I.....clerk of the Court of.....do hereby certify, that the foregoing contains the original proceedings of the said Court in the matter of the application of.....for a pension.

In testimony whereof, I have hereunto set my hand and seal of office, this.....day of.....&c.

The form of the proceedings and of the certificates will be so varied as to meet the case, when the declaration is made out of court, before a judge, as heretofore provided for.

Every applicant will produce the best proof in his power. This is the original discharge or commission ; but if neither of these can be obtained, the party will so state under oath, and will then procure, if possible, the testimony of at least one credible witness, stating, in detail, his personal knowledge of the services of the applicant, and such circumstances connected therewith as may have a tendency to throw light upon the transaction.

If such surviving witness cannot be found, the applicant will so state in his declaration, and he will also, whether he produce such evidence or not, proceed to relate all the material facts which can be useful in the investigation of his claim, and in the comparison of his narrative with the events of the period of his alleged service, as they are known at the Department. A very full account of the services of each person will be indispensable to a favorable action upon his case. The facts stated will afford one of the principal means of corroborating the declaration of the applicant, if true, or of detecting the imposition, if one be attempted ; and unless, therefore, these are amply and clearly set forth, no favorable decision can be expected. All applicants will appear before some court of record in the county in which they reside, and there subscribe and be sworn to one of the declarations above provided, according to the nature of his case.

The court will propound the following interrogatories to all applicants for a pension, on account of service in the militia, State troops, or volunteers.

1. Where and in what year were you born ?
2. Have you any record of your age ; and, if so, where is it ?
3. Where were you living when called into service ; where have you lived since the Revolutionary War ; and where do you now live ?
4. How were you called into service ; were you draughted, did you volunteer, or were you a substitute ; and if a substitute, for whom ?
5. State the names of some of the regular officers who were with the troops where you served ; such continental and militia regiments as you can recollect, and the general circumstances of your service ?
6. { *To a Soldier*.—Did you ever receive a discharge from the service ; and, if so, by whom was it given, and what has become of it ?  
*To an Officer*.—Did you ever receive a commission ; and, if so, by whom was it signed, and what has become of it ?
7. State the names of persons to whom you are known in your present neighborhood, and who can testify as to your character for veracity, and their belief of your services as a soldier of the Revolution.

The court will see that the answers to these questions are embodied in the declaration, and they are requested to annex their opinions of the truth of the statement of the applicant.

The applicant will further produce in court, if the same can be done, in the opinion of the court, without too much expense and inconvenience to him, two respectable persons



—one of whom should be the nearest clergyman, if one lives in the immediate vicinity of such applicant—who can testify, from their acquaintance with him, that they believe he is of the age he represents, and that he is reputed and believed in the neighborhood to have been a revolutionary soldier, and that they concur in that opinion. If one of these persons is a clergyman, the court will so certify; and they will also certify to the character and standing of other persons giving such certificates.

The traditionary evidence of service is deemed very important in the absence of any direct proof, except the declaration of the party. And the courts are requested to be very particular in the inquiry whether the belief is general, and whether any doubts have existed upon the subject. To require from the applicants positive proof of service from a temporary survivor, would, after the lapse of so many years, be to deprive many of them of the benefit of the law. And as no presumption is raised against the militia by the existence of rolls in the department, there is no good reason why this requisition should be extended to them. On the other hand, to receive the declaration of the parties, as a sufficient ground for placing them upon the Pension Roll, without corroborating circumstances, would be to open the Treasury to great frauds. A just medium seems to present the best rule for carrying into effect the objects of Congress.

If the two persons, whose certificates are required, cannot be produced in court, without too much inconvenience and expense to the applicant, then the statements of the facts and opinions above mentioned will be made, under oath before some judge or justice of the peace, and the certificate of the court to the situation and credibility of the persons making the statement will be given.

Applicants unable to appear in court, by reason of bodily infirmity, may make the declaration before required, and submit to the examination, before a judge or justice of a court of record of the proper county, and the judge or justice will execute the duties which the court is herein requested to perform, and will also certify that the applicant cannot, from bodily infirmity, attend the court.

Whenever any official act is required to be done by a judge or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State or Territory, or of the proper clerk of the court or county, under his seal of office, will be annexed, stating that such person is a judge or justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

3. Persons serving in the marine forces.

4. Indian spies.

Each of these two latter classes of cases will produce proof, as nearly as may be, conformably to the preceding regulations, and authenticated in a similar manner, with such variations as the different nature of the service may require.

No payments can be made on account of the services of any person who may have died before the taking effect of the act of June 7, 1832; and in case of death subsequent thereto, and before the declaration herein required is made, the parties interested will transmit such evidence as they can procure, taken and authenticated before a court of record, showing the services of the deceased, the period of his death, the opinion of the neighborhood respecting such services, the title of the claimant, and the opinion of the court upon the whole matter.

The declarant must appear in open court, unless prevented from doing so by reason of bodily infirmity; in which case the declarant will follow the rule laid down for his guidance.

The declarant must take his declaration in the county where he resides. If he should fail to do so, he must assign a sufficient reason for not conforming to the rule.

The age of the claimant must invariably be mentioned.

The declarant must mention the period or periods of the war when he served.

Every continental officer or soldier must give the name of the colonel under whom he served; otherwise a satisfactory examination of the claim cannot be had. Every claimant must state, with precision, the length of his service, and the different grades in which he served, in language so definite as to enable the department to determine to what amount of pension he is entitled. In a case where the applicant cannot, by reason of the loss of memory, state precisely how long he served, he should amend his declaration by making an affidavit in the following words:

"Personally appeared before me, the undersigned, a justice of the peace, &c., A. B. who being duly sworn, deposes and saith that, by reason of old age, and the consequent loss of memory, he cannot swear positively as to the precise length of his service, but according to the best of his recollection, he served not less than the period mentioned below, and in the following grades; For . . . . years . . . . . months, and . . . . . days, I served as a . . . . . For . . . . . months and . . . . . days, I served as a . . . . .; and for such service I claim a pension."

It is important, in all cases, to determine with precision

the period for which each applicant served, and the particular rank he held, as the law directs the pension to be paid according to the grade of the pensioner, and the length of his service. The use of the phrase *about three or four months*, is too indefinite, and all such qualifying expressions are objectionable. Some persons who apply for pensions merely state that they served two years in the militia, &c., without specifying the tours, the name of the officers, and other particulars respecting their service. This form of a declaration is highly objectionable. It must, in every case, be clearly shown under what officers the applicant served; the duration of each term of engagement; the particular place or places where the service was performed; that the applicant served with an embodied corps called into service by competent authority; that he was either in the field or in garrison; and for the time during which the service was performed, he was not employed in any civil pursuit.

The law makes the relinquishment indispensable, except invalids.

The opinion of the court is always required.

The clerk must give his certificate in every case.

The clerk must affix his seal, and if it has no device or inscription by which it can be distinguished from any other seal, or if he has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should accompany the papers.

*Mode of authenticating papers.*—In every instance where the certificate of the certifying officer who authenticates the papers is not written on the same sheet of paper which contains the affidavit or other papers authenticated, the certificate must be attached thereto by a piece of tape or narrow ribbon, the ends of which must pass under the seal of office of the certifying officer, so as to prevent any paper from being improperly attached to the certificate.

*Proof of service.*—In a case where the name of the applicant is not found on the records of the department, he must prove his service by two credible witnesses, who are required to set forth in their affidavits the time of the claimants entering the service, and the time and manner of his leaving the same, as well as the regiment, company, and line to which he belonged. The magistrates who may administer the oaths must certify to the credibility of the witnesses, and the official character and signature of the magistrate must be certified by the proper officer, under his seal of office.

In case the soldier who rendered the service be dead, his

widow, if he left one, is entitled to such amount of pension as her husband was entitled to at the date of his death. She can claim such amount by making a declaration and filing proofs as follows :

DECLARATION OF WIDOW TO OBTAIN ARREARS OF PENSION TO WHICH HER HUSBAND WAS ENTITLED.

STATE OF..... } ss. In open Court.  
COUNTY OF..... } *Present*  
..... Term 18 ..

On this..... day of..... A. D. 185 , before the court of ..... held within and for the County and State aforesaid, personally appeared..... aged..... years, a resident of..... in the County of..... and State of.....; who being duly sworn according to law, doth on her oath make the following declaration in order to obtain the benefits of the act of 7 June, 1832, that she is the widow of..... deceased, who was a..... in the company..... commanded by Captain..... in the regiment..... commanded by..... in the War of the Revolution; that to the best of her information and belief..... her husband entered the service at..... about the..... day of..... A. D. 17.....; for the term of..... and continued in actual service in said War, for the term of..... and was honorably discharged at..... on the..... day of..... A. D. 17.....; that she has no documentary evidence of his said service, but that the foregoing she believes to be correct.

That her husband never applied for a pension under the provisions of this act to her knowledge, nor was he ever pensioned.

She further states that she was married to the said..... in..... State of..... : on the..... day of..... A. D. ....; by one..... a..... : and that her name before her said marriage was.....; that her husband died at..... on the..... day of..... A. D. 18 .., and that she is still his widow.

And she further states that there is.... public record of her marriage—and that there is.... private record of her marriage..... That she cannot file herewith his Certificate of discharge for the reason that..... She hereby appoints..... her true and lawful Attorney, with power of substitution, to prosecute this her claim for a pension, to receive the Certificate when issued, and to do all other acts necessary and proper in the premises.

WITNESS : .....

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent..... and believe her to be as is above stated, and that she is of the age above stated ; and further, that I am not interested in this her claim as Attorney or otherwise.

Witness my hand and the seal of said Court, affixed  
by order of said Court now in session.

..... Clerk.

STATE OF..... } ss.  
COUNTY OF..... }

On this..... day of..... A. D. 185 , personally appeared before the subscriber, a Justice of the Peace, in and for the County aforesaid, duly authorized to administer oaths,..... a resident of said County, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs. ...., the above named applicant for a pension—that he has known her for .. years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be the “.....” and printed in the year.....; and that the said record, as far as relates to the marriage of the said applicant and the soldier above named,

and of his death, is as follows : being an exact copy of the same .....  
and that the said deponent is not interested in the claim.

SUBSCRIBED AND SWORN TO, the day and year  
first above written, before me, and I certify that  
I am in no manner interested.  
..... *Justice of the Peace.*

STATE OF..... }  
COUNTY OF..... } ss.

On this ..... day of..... A. D. 185 , personally  
appeared before me, the undersigned, a Justice of the Peace, in and for  
said County,..... and..... who are to me well  
known, and who are credible witnesses, and who being by me duly sworn,  
depone and say, that they are each well acquainted with Mrs.....  
the above applicant for a pension—that they have known her for..... years last  
past. That they were acquainted with..... her late husband, having  
known him for..... years previous to his death ; that they, the said.....  
and..... lived together as husband and wife, and were reputed so to be,  
that deponents never heard the fact of their marriage disputed or questioned.  
That the said..... died on the..... day of..... ; and the said  
..... has been since that day, and still is reputed to be his widow, which  
deponents believe to be the fact. That she has never married since her said hus-  
band's death, and still is his widow, and that her said husband was, as they be-  
lieve, the identical man mentioned as a soldier in her declaration above ; and fur-  
ther, that they were present and saw..... execute the foregoing affidavit by  
(*signing her name*) to the foregoing declaration, and making oath thereto in  
due form of law, and further, that they, deponents, do reside in the County  
aforesaid.

WITNESS,.....

SWORN TO AND SUBSCRIBED before me, this..... day of..... A. D. 18...  
..... *Justice of the Peace.*

STATE OF..... }  
COUNTY OF..... } ss. In open Court.  
COURT OF..... } Present

It is hereby certified that satisfactory evidence has been exhibited before the  
said Court, which evidence is hereto annexed, that.....  
was a Revolutionary soldier of the United States, and that he died on the.....  
day of..... 18... leaving surviving him a widow named.....  
and that the said..... is still living, and a resident of..... in said  
State.

IN TESTIMONY WHEREOF, I have by order of said Court, hereunto set my hand  
and affixed the seal of the Court, this..... day of  
..... one thousand eight hundred and fifty-  
..... *Clerk.*

In case the soldier who performed the service be dead,  
and no widow survives him, his children become entitled.  
In such case the declaration may be made by all the child-  
ren jointly, or by one for the benefit of himself and the oth-  
ers, or by an administrator. It is preferable that the appli-  
cation should be made by an administrator.

## FORM OF DECLARATION, ETC., FOR SURVIVING CHILDREN.

ACT 7TH JUNE, 1832.

STATE OF..... } ss. In open Court.  
COUNTY OF..... } Present  
..... Term 18 ..

On this..... day of..... A. D. 185 .., before the Court of  
..... held within and for the County and State aforesaid, personally  
appeared..... aged..... years, a resident of..... in the  
County of..... and State of.....; who being duly sworn accord-  
ing to law, doth on his oath make the following declaration, in order to obtain  
the benefits of the provisions of the act of 7th June, 1832: That he is one of the  
children and heirs at law of..... deceased, who was a..... in the  
company..... commanded by Captain..... in the regiment.....  
commanded by..... in the War of the Revolution.

That his said father (as he believes) entered the service at..... about  
the..... day of..... A. D. 17...; for the term of..... and con-  
tinued in actual service in said War, for the term of..... and was  
honorably discharged at..... on the..... day of.....  
A. D. 17... That he was in the following engagements, viz:.....

..... That he served under  
the following named officers in addition to the above, viz:.....  
..... That he has no documentary evidence of  
his service. That he left a widow named.....; who died on the  
..... day of..... 18... That the following are the only surviving  
children of the said soldier, viz:.....

That his mother was married to the said..... in..... State  
of..... on the..... day of..... A. D. 18 ..; by one  
..... a..... and that her name before her said marriage  
was.....; that his father died at..... on the.....  
day of..... A. D. 18 ..

And further, that there is..... public record of her marriage—and that  
there is..... private record of her marriage....

He hereby appoints..... his true and lawful Attorney, with power of  
substitution, to prosecute his claim, to receive the Certificate when issued,  
and to do all other acts necessary and proper in the premises.

WITNESS:.....

SWORN TO AND SUBSCRIBED before me, on the day and year first above men-  
tioned, and I hereby certify that I know the said deponent.....  
and believe him to be as is above stated, and that he is of the age above stated;  
and further, that I am not interested in this claim as Attorney or otherwise.

Witness my hand and the seal of said Court, affixed }  
by order of said Court, now in session.

..... Clerk.

STATE OF..... } ss.  
COUNTY OF..... }

On this..... day of..... A. D. 185 .., personally  
appeared before the subscriber, a Justice of the Peace, in and for the  
County aforesaid, duly authorized to administer oaths,.....  
a resident of said County, to me well known as a credible witness, and who  
being by me first duly sworn, doth on his oath state that he was acquaint-  
ed with Mrs..... above named—that he knew her for.....  
years before her death, that he has examined her family record—that he believes  
the same to be genuine—that it is contained in a book purporting to be the  
“.....” and printed in the year.....; and that the said record, as  
far as relates to the marriage of the said Mrs..... of the death of herself  
and her husband—and the names and date of the birth of their children, is as  
follows:.....  
and that the deponent is not interested in the claim.

SUBSCRIBED AND SWORN TO, the day and year  
first above written, before me, and I certify  
that I am in no manner interested.

..... Justice of the Peace.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... A. D. 185..., personally appeared before me, the undersigned, a Justice of the Peace, in and for said County,..... and..... who are to me well known, and who are credible witnesses, and who being by me duly sworn, depose and say, that they were each well acquainted with Mrs..... that they knew her for..... years prior to her death. That they were acquainted with..... her late husband, having known him for..... years previous to his death; that they, the said..... and..... lived together as husband and wife, and were reputed so to be, that deponents never heard the fact of their marriage disputed or questioned. That the said..... died on the..... day of..... 18; and the said..... died on the..... day of..... A. D. 18, and that the following named are the only surviving children of the said soldier, viz:.....

WITNESS:.....

SWORN TO AND SUBSCRIBED before me, this..... day of..... A. D. 18..  
..... Justice of the Peace.

STATE OF..... }  
COUNTY OF..... } ss. In open Court.  
Court of..... } Present

It is hereby certified that satisfactory evidence has been exhibited before the said Court, which evidence is hereto annexed;

That....., who as reputed, was a Revolutionary soldier of the United States, died on the..... day of..... eighteen hundred and..... leaving surviving him a widow named..... who died on the..... day of..... A. D. 18, and that..... are the only surviving children of the aforesaid soldier, who are residents of..... in the State of.....

IN TESTIMONY WHEREOF, I have hereunto by order of said Court, set my hand and affixed my seal of office this..... day of.....  
..... one thousand eight hundred and fifty-  
..... Clerk.

FORM OF DECLARATION, ETC., FOR ADMINISTRATOR UNDER  
ACT 7TH JUNE, 1832.

STATE OF..... }  
COUNTY OF..... } ss. In open Court. Term 18..  
..... Present

On this..... day of....., A. D. 185..., before the Court of..... held within and for the County and State aforesaid, personally appeared..... aged..... years, a resident of..... in the County of..... and State of.....; who being duly sworn according to law, doth on his oath make the following declaration in order to obtain the benefits of the provisions of the act of 7th June, 1832: That he is the Administrator of..... deceased, who was a..... in the company..... commanded by Captain..... in the regiment..... commanded by..... in the War of the Revolution.

That the said..... entered the service at..... about the..... day of..... A. D. 17.; for the term of..... and continued in actual service in said War for the term of..... and was honorably discharged at..... on the..... day of..... A. D. 17.; that he was in the following engagements viz:..... That he served under the following named officers in addition to the above, viz:.....; That there is no documentary evidence of his service; that he left a widow, named..... who died on the..... day of..... A. D. 18. That the following are the only surviving children of the said soldier, viz:.....; that he was married to the said.....

..... in ..... State of ..... on the ..... day of .....  
 A. D. 18...; by one ..... a .....; and that the said soldier died at  
 ..... on the ..... day of ..... A. D. 18...

And he further states that there is ..... public record of his marriage—and  
 that there is ..... private record of his marriage.....

He hereby appoints ..... his true and lawful Attorney, with power  
 of substitution, to prosecute this his claim, to receive the Certificate when issued,  
 and to do all other acts necessary and proper in the premises.

WITNESS: .....

SWORN TO AND SUBSCRIBED before me, on the day and year first above men-  
 tioned, and I hereby certify that I know the said deponent.....  
 and believe him to be as is above stated, and that he is of the age above stated;  
 and further, that I am not interested in this his claim as Attorney or otherwise.

Witness my hand, and the seal of said Court, affixed  
 by order of said Court, now in session.

..... Clerk.

STATE OF ..... }  
 COUNTY OF ..... } ss.

On this ..... day of ..... A. D. 185..., personally appeared before the sub-  
 scriber, a Justice of the Peace, in and for the County aforesaid, duly authorized  
 to administer oaths, ..... a resident of said County, to me well known  
 as a credible witness, and who, being by me first duly sworn, doth on his oath  
 state that he is acquainted with Mrs. .... above named; that he knew  
 her for ..... years before her death; that he has examined her family record;  
 that he believes the same to be genuine; that it is contained in a book purport-  
 ing to be the "....." and printed in the year .....; and that the said  
 record, as far as relates to the marriage of the said ..... and the soldier above  
 named, and of their death; and the names and date of the birth of their children  
 is as follows, which is an *exact* copy of the same; ..... and that the said  
 deponent is not interested in the claim.

SUBSCRIBED AND SWORN TO, the day and year first above }  
 written, before me, and I certify that I am in no manner }  
 interested. }

*Justice of the Peace.*

STATE OF ..... }  
 COUNTY OF ..... } ss.

On this ..... day of ..... A. D. 185..., personally appeared before me,  
 the undersigned, a Justice of the Peace, in and for said County, .....  
 ..... and ..... who are to me well known, and who are credible  
 witnesses, who being by me duly sworn, depose and say, that they were  
 each well acquainted with Mrs. ....; that they knew her  
 for ..... years before her death; that they were acquainted with .....  
 her late husband, having known him for ..... years pre-  
 vious to his death; that they, the said ..... and .....  
 lived together as husband and wife, and were reputed so to be; that deponents  
 never heard the fact of their marriage disputed or questioned. That the said  
 ..... died on the ..... day of ..... 18...; and the said .....  
 died on the ..... day of ..... A. D. 18...; and that the following named are the  
*only* surviving children of the said soldier, viz: .....

WITNESS: .....

SWORN TO AND SUBSCRIBED before me, this ..... day of ..... A. D. 18...  
 ..... J. P.

STATE OF ..... }  
 COUNTY OF ..... } ss. In open Court.  
 COURT OF ..... } Present

It is hereby certified that satisfactory evidence has been exhibited before the  
 said Court, which evidence is hereto annexed:

That ..... who, as reputed, was a Revolutionary soldier of the United  
 States, died on the ..... day of ..... eighteen hundred and ..... leaving



surviving him a widow, named.....who died on the.....day of  
 .....A. D. 18 ; and that.....are the only surviving  
 children of the aforesaid. And further that.....has been duly  
 appointed by proper authority under the laws of said State, Administrator of  
 the said.....deceased: having executed with good and sufficient  
 sureties a bond in the penal sum of \$.....conditioned for the faithful perform-  
 ance of his duties as such Administrator, and that his letters of Administration  
 are in full force.

IN TESTIMONY WHEREOF, I have hereunto, by order of said Court, set my hand  
 and affixed my seal of office this.....day of.....one  
 thousand eight hundred and fifty-  
 .....Clerk.



# REVOLUTIONARY PENSIONS.

## PENSIONS FOR WIDOWS.

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ACT OF JULY 4, 1836.

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This act provides pensions to the widows of those persons who served in the war of the revolution, in the manner specified in the act of June 7, 1832, whose marriage took place *before the expiration of the last period of his service.*

## WIDOWS' PENSION ACT OF JULY 4, 1836.

AN ACT granting half-pay to widows or orphans, where their husbands or fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes.

APPROVED, JULY 4, 1836.

SEC. 2. *And be it further enacted*, That if any officer, non-commissioned officer, musician, soldier, Indian spy, mariner or marine, whose service during the revolutionary war was such as is specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died since the fourth day of March, eighteen hundred and thirty-one, and before the date of said act, the amount of pension which would have accrued from the fourth day of March, eighteen hundred and thirty-one, to the time of his death, and become payable to him by virtue of that act, if he had survived the passage thereof, shall be paid to his widow; and if he left no widow, to his children, in the manner prescribed in the act hereby amended.

SEC. 3. *And be it further enacted*, That if any person who served in the war of the revolution in the manner specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, leaving a widow whose marriage took place before the expiration of the last period of his service, such widow shall be entitled to receive, during the time she may remain unmarried, the annuity or pension which might have been allowed to her husband, by virtue of the act aforesaid, if living at the time it was passed.

SEC. 4. *And be it further enacted*, That any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any money or half-pay granted by this act, shall be utterly void and of no effect; each person acting for and in behalf of any one entitled to money under this act, shall take and subscribe an oath, to be administered by the proper accounting officers and retained by him and put on file, before a warrant shall be delivered to him, that he has no interest in said money by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

SEC. 5. *And be it further enacted*, That the Secretary of War shall adopt such forms of evidence, in applications under this act, as the President of the United States shall prescribe.

In case the widow of a revolutionary soldier married after his death, she could not claim under this act, although she was a widow at the date of its passage.

This objection was removed by the following act passed March 3, 1837, viz.:

AN ACT explanatory of the act entitled "An act granting half-pay to widows and orphans, where their husbands and fathers have died of wounds received in the military service of the United States, and for other purposes."

APPROVED, MARCH 3, 1837.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, the benefits of the third section of the act entitled "An act granting half-pay to widows and orphans where there husbands and fathers have died of wounds received in the military service of the United States, and for other purposes," approved the fourth day of July, eighteen hundred and thirty-six, shall not be withheld from any widow in consequence of her having married after the decease of the husband, for whose services she may claim to be allowed a pension or annuity under said act: *Provided*, That she was a widow at the time it was passed.

SEC. 2. *And be it further enacted*, That, the widow of any person who continued in the service of the United States until the third day of November, seventeen hundred and eighty-three, and was married before that day, and while her husband was in such service, shall be entitled to the benefits of the third section of the aforesaid act.

Under the third section of the act of 4th July, 1836, a widow cannot receive its benefits in case the officer or soldier, on account of whose service she claims, was *living at the date of its passage*. This objection was removed by the act of July 7, 1838, viz.:

A resolution for the benefit of the widows of certain revolutionary officers and soldiers.

APPROVED, JULY 7, 1838.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That, the benefits of the third section of an act entitled "An act granting half pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States in certain cases, and for other purposes," approved the fourth day of July, eighteen hundred and thirty-six, shall not be withheld from any widow whose husband has died since the passage of the said act, or who shall

hereafter die, if said widow shall otherwise be entitled to the same.

WIDOWS AND ORPHANS, &c.—1. Under the 3d section of the act of the 4th July, 1836, the widows and orphans of officers and soldiers, who had died of wounds received in the military service, or may, after the passage of the said act, die in consequence of such wounds, are entitled to the pension provided by that act. 2. The same is extended to the widows of officers who *were* living when the act of 7th June, 1832, was passed.

The children of a widow who was living on the 4th July, 1836, and was entitled to the benefit of the 3d section of the act of that date, can draw the amount due up to the date of her death, although she failed to apply.

In all cases where the husband was in the receipt of a pension under any of the revolutionary pension acts, until the time of his death, the pension of the widow, under the act of the 4th July, 1836, can only commence from the date of her husband's death.

OFFICE OF THE ATTORNEY GENERAL, *April 13, 1837.*

SIR: I proceed to state my opinion on the several questions arising on the act of the 4th of July, 1836, "granting half-pay to widows or orphans where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes," submitted in the communication of the Commissioner of Pensions, referred to me by your letter of the 24th ultimo.

"1. Whether the 3d section provides for the widows of officers and soldiers who have died since the 4th of July last?"

In my opinion, it does not. The words used in the 3d section, "if any person who, &c., *have died*," in their grammatical sense, do not extend to future cases, and it must be presumed that Congress intended to use them appropriately; especially when it is perceived that in the first section the second future "*shall have died*" is used—evidently with intent to embrace not only past cases, but those which might afterwards occur.

"2. Whether it extends to the widows of officers who were living at the time when the act of June 7th, 1832, passed?"

With some hesitation, I think it most agreeably to the general spirit of this law to answer this question in the affirmative. The main enacting part of the section is broad enough to embrace all persons who served in the manner specified, who died *before* the passing of the act; and though the concluding words, "*if living* at the time it [the law of 1832] *was passed*" are calculated to excite doubts as to the real intent of Congress, yet they are not, perhaps, sufficiently strong to limit the comprehensive language of the former part of the provision.

"3. Can the children of a widow, who was living on the 4th of July last, and was entitled to the benefits of the 3d section of the act, now draw the amount due up to the day of her death, although she failed to apply?"

According to several opinions heretofore given in this office, especially in navy pension cases, the right of the widow under the act is to be regarded as a vested interest accruing on the passage of the law, and not defeated by the omission to apply for it; and it goes, as such, on her death, to her personal representative: there being no special provision in the law giving it a different direction.

4. I am of opinion that, in all cases where the husband was in the receipt of a pension under any of the revolutionary pension acts, until the time of his death, the pension of the widow, under the act of the 4th of July, 1836, can only commence from the date of her husband's death. This is evidently the general principle of the law; and by this construction there will be no occasion to make deductions, nor will any of the difficulties arise which have been suggested by the Commissioner. \* \* \*

5. The construction given to the 3d section, in respect to widows who have married since the death of the husband performing the service, as stated by the Commissioner, was, in my judgment, the correct one; but, by the explanatory act of the 3d ultimo, the benefits of the provisions are extended to such persons.

To the SECRETARY OF WAR.

B. F. BUTLER.

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Pension of a husband not to be deducted in certain cases.

WAR DEPARTMENT, PENSION OFFICE, *July 24, 1837.*

SIR: I have the honor to state the following case for your decision:

Catharine Oakley, formerly Catharine See, was married to William Douglass in 1778, and at different periods, before and after the marriage, he served nine months, for which service she is entitled to a pension under the 3d section of the act of July 4th, 1836. But, after the death of Douglass, she married on the 1st of March, 1832, a pensioner named William Oakley, who died on the 2d November, 1835. As by the decision of the department, in conformity with the opinion of the Attorney General, the widow of a person who was a revolutionary pensioner, and who died after the 4th March, 1831, cannot be allowed to draw from an earlier period than the day of his death, it would seem to establish the principle that the widow who may become a pensioner cannot draw

pay for any period during which her husband received a stipend. If Douglass, who died in 1832, had drawn a pension up to the year in which he died, there would be no question as to the propriety of deducting the amount which he might have received. Such a deduction would be in strict conformity with the practice of the office. But a doubt arises in this case, whether the amount paid to Oakley can be deducted; because, although, as his wife, she derived some small benefit from his pension on account of his revolutionary service, yet, as that service could not, under the act of July 4th, 1836, be availing to her, it does not appear to accord strictly with principles of justice that she should not reap all the advantages which the services of the first husband gave her. The pension of 1836 was intended as a reward for the sufferings of those women who had husbands in the service during the revolutionary struggle; and it would seem to be an infringement of their rights not to allow them the full amount to which their husbands would have been entitled under the act of June 7, 1832. I submit, therefore, the following question:

Can the pension paid to William Oakley, during the time he was husband to Catharine Oakley, be deducted from the amount due to her, under the act of July 4, 1836, on account of the revolutionary services of William Douglass, to whom she was married during said service?

J. L. EDWARDS.

HON. JOEL R. POINSETT, *Secretary of War*.

The pension paid Oakley during the period he was husband of Catharine, widow of Douglass, ought not to be deducted from the pension due her on account of the services of her former husband.

J. R. POINSETT.

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MILITARY PENSIONS.—If a soldier dies after the 4th of March, 1831, and before the 7th June, 1832, and leaves a widow who dies before the 7th of June, 1832, the children of the widow, if not children of the deceased soldier, are *not* entitled to a pension, (but if children of the soldier, they *are* entitled.)

ATTORNEY GENERAL'S OFFICE, *April 13, 1837.*

SIR: In the memorandum of the honorable Mr. Hubbard, enclosed in your letter of the 24th ultimo, the following case is stated: "In case a soldier dies before the 7th of June, 1832, and after the 4th of March, 1831, and leaves a widow, and she dies also before the 7th of June, 1832, are his children entitled to the pension from March, 1831, to the day of his death; or does the pension go to the children of the widow?"



In answer to your request for my opinion on this subject, I have the honor to inform you that, in my opinion, the children of the *soldier*, and not the children of the widow, are entitled to the pension from the 4th of March, 1831, to the time of his death.

To the SECRETARY OF WAR.

B. F. BUTLER.

The Pension provided by the act of July 4, 1836, vest in the widow. In case she dies before making application for the benefits of the act, the pension can be recovered by *her* children surviving, or by an administrator for their benefit. In case there are no children, the pension lapses. Grandchildren are not recognized as claimants.

FORM OF DECLARATION AND REGULATIONS.

In order to carry into effect the act of Congress of the 4th of July, 1836, entitled "An act granting half pay to the widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes," the following rules have been prescribed by the President of the United States, and adopted by the Secretary of War.

Applicants must produce the best proof the nature of the case will allow as to the service of the deceased officer or soldier, the time when he died, and the complaint of which he died, and the supposed cause of his disease. It must be clearly shown in what company, and regiment or corps, he served, and the grade he held. Such proof must be had, either from the records of the War Department, the muster rolls, the testimony of commissioned officers, or the affidavits of persons of known respectability.

The legality of the marriage, the name of the widow, with those of her children who may have been under sixteen years of age at the time of the father's decease, with the State or Territory and county in which she and they reside, should be established. The legality of the marriage may be ascertained by the certificate of the clergyman who joined them in wedlock, or the testimony of respectable persons having knowledge of the fact. The age and number of the children may be ascertained by the deposition of the mother, accompanied by the testimony of respectable persons having knowledge of them, or by transcripts from the parish registers, duly authenticated. The widow, at the time of allowing the half pay, or placing her on the list for it, must show that she has not again married, and must,

moreover, repeat this at the time of receiving each and every payment thereof; because, in case her marrying again, the half pay to her ceases, and the half pay for the remainder of the time shall go to the child or children of the decedent. This may be done by the affidavits of respectable persons having knowledge of the case.

Applicants will make a declaration before a court of record, setting forth, according to the best of her knowledge or belief, the name and rank of the person, on account of whose service the claim is presented, the day (if possible) and the month and the year when the claimant's husband entered the service, and the time when he left the same; and, if under more than one engagement, the claimant must specify the particular periods, and the rank and names of the officers under whom the service was performed; the town or county and State in which the claimant's husband or father resided when he entered the service—whether he was a volunteer or substitute; the battles, if any, in which he was engaged; the country through which he marched, with such further particulars as may be useful in the investigation of the claim; and, also, if the fact be so, that the claimant has no documentary evidence in support of the claim.

Claimants must not only produce such proof as the foregoing regulations direct, but they must, in all cases, as an indispensable requisite, show when they were legally married to the deceased officer or soldier on account of whose services the claim is presented, and that the marriage took place before the last term of service of the husband had expired.

Applicants unable to appear in court, by reason of bodily infirmity, may make the declaration before required before a judge, or justice of a court of record of the county in which the applicant resides; and the judge or justice will certify that the applicant cannot, from bodily infirmity, attend the court.

Whenever any official act is required to be done by a judge or justice of a court of record, or by a justice of the peace, the certificate of the secretary of State, or of the Territory, or of the proper clerk of the court or county, under his seal of office, will be annexed, stating that such a person is a judge or justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

The widows of those who served in the navy, or as Indian spies, will produce proof, as nearly as may be, conformably

to the preceding regulations, and authenticated in a similar manner, with such variations as the different nature of the service may require.

The form prescribed for claimants under the third section of the act will be observed by every other description of claimants, so far as the same may be applicable to their cases. The judge or justice who may administer an oath must, in every instance, certify to the credibility of the affidavit.

In every case in which the deceased officer or soldier was a pensioner, the fact should be so stated; and the deceased pensioner so described as to enable the department to refer immediately to the evidence upon which he was pensioned, and thus facilitate the investigation of the claim of his widow or children.

FORM OF DECLARATION FOR BENEFITS OF ACT OF JULY 4, 1836.

STATE OF..... } ss.  
COUNTY OF.....

On this..... day of..... in the year one thousand eight hundred and....., personally appeared before the..... of the Court of....., held in and for said County, in open court, said court being of record, Mrs....., aged..... years, a resident of....., in the County of..... and State of.....; who being first duly sworn, according to law, doth on her oath, make the following declaration, in order to obtain the benefit of the provision made by the act of Congress, passed July 4, 1836: That she is the widow of....., who was a..... in the war of the revolution. That his place of residence at the time he entered the service, was..... in the State of..... That he entered under the following named officers, belonging to the militia or other troops of the State of....., for the period hereafter mentioned:

That she has been informed by her said husband that he was engaged in the following battles, and was stationed at the following places, viz. .... She further declares that she was married to the said..... on the..... day of....., in the year seventeen hundred and.....; that her husband, the aforesaid....., died on the..... day of....., in the year.....; and that she has remained a widow ever since that period, as will more fully appear by reference to the proofs hereto annexed.

SWORN TO AND SUBSCRIBED, on the day and year above written, before me, in open court.

Witness my hand, and the seal of said Court, affixed by order of said court, this..... day of..... A.D. 18..... I being disinterested.

..... Clerk.

In case the widow has married the second time, in place of the last paragraph of the above declaration, insert the following, viz.:

She further declares, that she was married to the said..... on the..... day of....., in the year seventeen hundred and.....; that her husband, the aforesaid....., died on the..... day of....., that she was afterwards married to....., who died on the..... day of.....; and that she was a widow on the

4th of July, 1836, and still remains a widow, as will more fully appear by reference to the proof hereto annexed.

In case there is a public record of the marriage, a certified copy of the same should be procured and filed with the declaration.

The clerk should copy the record without using any figures, writing the dates in words, and then add the following certificate :

"I certify that the above is a true copy of the record, with the exception of the date and figures, which are expressed in the record in fair legible date and figures, as follows :

*Insert them here as in the record.*

*Clerk's signature.*

Then add the following affidavit :

"I, ....., Clerk of ..... above named, depose and say that I hold the office of ....., and that the above is a true extract from the record of said ....., with the exception above named, as certified by me.

Subscribed and sworn to before me, this ... day of )  
....., A.D. 18 ; and I certify that I am not inter- }  
ested as agent or attorney herein. ) ..... J. P.

Then must follow the certificate of the clerk of the court or county that the Justice before whom the affidavit is made, is duly authorized to administer oaths.

In case there is *no public record* of the marriage, the widow claiming should make an affidavit to be affixed to the declaration, as follows :

STATE OF .....  
COUNTY OF ..... } ss.

On this ..... day of ....., in the year one thousand eight hundred and ....., personally appeared before me the subscriber, a Justice of the Peace in and for said county, Mrs. ...., who is to me known to be the person mentioned as claimant in the accompanying declaration, and who, being by me first duly sworn, doth on her oath state, that there is no public record of her marriage, to the best of her knowledge, information and belief.

Sworn to and subscribed before me, this  
.... day of ....., A.D. 18..

..... J. P.

In case there is a *private record* of the marriage, the *book* containing the same should be sent to the Pension Office. The same can be securely enclosed and addressed to "The Commissioner of Pensions, Washington City, D. C.," with the following endorsed on the wrapper—"Evidence in case of Mrs. ———, for Pension Act July 4, 1836." Postage need not be paid. The record will, after examination by the officer, be returned to the widow.

In case there is no private record, the affidavit of the widow respecting the public record, should be so amended as to state that there is no private record.

In case there are neither public or private records of the marriage, it will be necessary to prove the marriage by the affidavits of persons having knowledge of the fact. The witnesses should state their ages and place of residence, and **must** state why they are able to testify to the date of the marriage, or how the events became impressed upon their minds, so that they can satisfy the office as to the probability of their being correct as to dates.

The identity of the widow must next be proved by the affidavits of two certified credible witnesses, as follows :

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of ....., A.D. 185., personally appeared before me, the undersigned, a Justice of the Peace, in and for said County,..... and ..... who are to me well known, and who are credible witnesses, and who being by me duly sworn, depose and say, that they are each well acquainted with Mrs....., the above applicant for a pension—that they have known her for..... years past. That they were acquainted with..... her late husband, having known him for..... years previous to his death ; that they, the said..... and..... lived together as husband and wife, and were reputed so to be, that deponents never heard the fact of their marriage disputed or questioned. That the said..... died on the..... day of....., 18.. ; and the said..... has been since that day, and still is reputed to be his widow, which deponents believe to be the fact. That she has never married since her said husband's death, and still is his widow, and that her said husband was the identical man mentioned as a soldier in her declaration, and further, that they, deponents, do reside in the county aforesaid.

WITNESS.....

SWORN TO AND SUBSCRIBED before me, this..... day of....., A.D. 18..  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I hereby certify, that..... Esq., before whom the foregoing affidavits were made, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signatures thereto are genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of.... Court, for the County aforesaid, this..... day of..... 185..

..... Clerk of.....

In case the widow is dead, the children surviving her, can claim : the form of declaration, &c., applicable will be found under remarks relative to claims under act of 7th June, 1832, on page 36.

Administrators may claim under this act for the benefit of the surviving children. The form of declaration applicable will be found on page 37. In both cases the date of the act should be changed.



# REVOLUTIONARY PENSIONS.

## PENSIONS FOR WIDOWS.

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ACT OF JULY 7, 1838.

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This act, together with those supplemental thereto, provides pensions to the widows of officers and soldiers, who served in the revolutionary war, (who, if living, would be entitled under the act of 7th June, 1832) who were married *after* the expiration of the service, and *before* the 1st January, 1794, to commence on the 4th March, 1836, and to continue for five years.

## WIDOWS' PENSION ACT OF JULY 7, 1838.

AN ACT granting half-pay and pensions to certain widows.

APPROVED, JULY 7, 1838.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* if any person who served in the war of the revolution in the manner specified in the act passed the seventh of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, leaving a widow, whose marriage took place after the expiration of the last period of his service, and before the first day of January, seventeen hundred and ninety-four, such widow shall be entitled to receive, for and during the term of five years from the fourth day of March, eighteen hundred and thirty-six, the annuity or pension which might have been allowed to her husband, in virtue of the said act, if living at the time it was passed: *Provided, That* in the event of the marriage of such widow, said annuity or pension shall be discontinued.

SEC. 2. *And be it further enacted, That* no pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest, in any annuity, half-pay, or pension, granted by this act, shall be valid, nor shall the half-pay, annuity, or pension, granted by this act, or any former act of Congress, be liable to attachment, levy, or seizure, by any process, in law or equity, but shall enure wholly to the personal benefit of the pensioner or annuitant entitled to the same; and that before a warrant shall be delivered to any person acting for or in behalf of any one entitled to money under this act, such person shall take and subscribe an oath or affirmation, to be administered by the proper accounting officer, and put on file, that he has no interest in said money, by any pledge, mortgage, transfer, agreement, understanding, or arrangement, and that he does not know or believe that the same has been so disposed of to any other person.

SEC. 3. *And be it further enacted, That* the Secretary of War shall adopt such regulations and forms of evidence, in relation to applications and payments under this act, as the President of the United States may prescribe.

A widow is not entitled under the foregoing act, in case her husband, for whose service she claims, was living on the 7th day of June, 1832.



OFFICE OF THE ATTORNEY GENERAL, May 31, 1842.

SIR: I have had the honor to receive and to consider your observations of the 30th instant, on the construction heretofore put upon the words of the act of July 7, 1838, in relation to pensions to be paid to the widows of officers who have died, and who, but they were dead at the time of the passing of the act of 1832, would have received their pension under this latter act. Considering it as *res integra*, I should say that the case of a widow whose husband actually received his annuity under that act, is not within the provisions of the statute of 1838. Besides that, the words do not embrace the case; and, besides the difficulty—insuperable, it appears to me—in the way of a widow drawing pay from the 4th March, 1836, when her husband happens to have survived that epoch, the 4th section of the act of 1832 provides expressly for the case of an officer dying “during the period intervening between the semi-annual payments directed to be made.” The provision is, “that the proportionate amount of pay which shall accrue between the last preceding semi-annual payment and the death of such person, shall be paid to his widow.” The act of 1832, therefore, contemplates the case of a husband entitled under it, and gives the widow all he would have received, and no more. The act of 1836 took up a case not within that of 1832. It provides for a certain description of wife who was totally excluded from all benefit under that act by the death of her husband. The act of 1838 goes a little further. It extends to another description of wives; but it still contemplates them as it gives to them what their husbands, if alive, would have taken. I do not see how language can be plainer.

But Mr. Butler's opinion having settled the practice under the act of 1836, it is perhaps, too late to change your practice in regard to it. The act of 1838 differs from the last mentioned statute in the important feature above referred to. The widow is to begin to draw her pension from March, 1836. Now, if her husband were then alive, it is clear she could not be entitled to an additional allowance in her own right. I hold that to be fatal to the application of Mr. Butler's reasoning to the last act. With respect to this act, therefore, you are free to take the course you shall judge fittest.

I should have rejoiced to be able to adopt a construction favorable to the claims of the widows of these brave men.

But the law which gives, disposes; and I am bound to interpret it as I find it.

H. S. LEGARE.

To the SECRETARY OF WAR.

The decision of the Pension office founded upon the above opinion of the Attorney General, was repealed by the resolution of Congress passed 16th August, 1842.

A RESOLUTION declarative of the pension act of July seventh, eighteen hundred and thirty-eight.

Benefits of the act not to be withheld from certain widows.

APPROVED AUGUST 16, 1842.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, the benefits of the act, entitled "An act granting half-pay and pensions to certain widows," approved the seventh day of July, eighteen hundred and thirty-eight, shall not be withheld from any widow whose husband died after the passage of the act of the seventh of June, eighteen hundred and thirty-two, and before the act of the seventh July, eighteen hundred and thirty-eight, if otherwise entitled to the same.*

A widow, whose husband served six months in the war of the revolution, whose marriage took place prior to 1794, is excluded from the provisions of the act of 7th July, 1838, in case of marriage after the death of her husband on account of whose service she claims—she being the widow of the last and not of the first husband.—*Opinion Att'y Gen'l, Sept. 18, 1838.*

ATTORNEY GENERAL'S OFFICE, *September 18, 1838.*

SIR: In your letter of the 17th instant, you propose the following question for my opinion: "Is a widow, whose husband served six months during the revolutionary war, and who was married to him prior to the year 1794, excluded from the provisions of the act of the 7th of July, 1838, in consequence of having married after the death of her husband, on account of whose service she claims?"

The 1st section of the act of the 7th of July, 1838, is as follows: "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, if any person who served in the war of the revolution, in the manner specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled 'An act supplementary to the act for the relief of certain surviving officers and soldiers of*

the revolution,' have died, leaving a widow, whose marriage took place after the expiration of the last period of his service, and before the first day of January, seventeen hundred and ninety-four, such widow shall be entitled to receive, for and during the term of five years from the fourth day of March, eighteen hundred and thirty-six, the annuity or pension which might have been allowed to her husband in virtue of said act, if living at the time it was passed: *Provided*, That, in the event of the marriage of such widow, said annuity or pension shall be discontinued."

It is upon this section, and no other provision of law, that the class of claims embraced in your question is to be allowed or rejected. It cannot be believed that Congress intended to, and did, provide for a discontinuance of a pension already granted, upon the event of the widow's second marriage, and still that such marriage should not prevent the allowance of the pension in the first instance, when the second marriage took place before the pension was granted. I am, therefore, of opinion that the Commissioner of Pensions decided correctly in rejecting this class of claims.

To the SECRETARY OF WAR.

FELIX GRUNDY.

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The objection stated in the foregoing opinion of the Attorney General was removed by the act of 23d August, 1842.

AN ACT to amend the acts of July, eighteen hundred and thirty-six, and eighteen hundred and thirty-eight, allowing pensions to certain widows.

APPROVED, AUGUST 23, 1842.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the marriage of the widow, after the death of her husband, for whose services she claims a pension under the act of the seventh of July, eighteen hundred and thirty-eight, shall be no bar to the claim of such widow to the benefit of that act, she being a widow at the time she makes application for a pension.

The Secretary of War decided, 2d September, 1842, that pensions under the act of 7th July, 1838, should commence on the 4th March, 1836, notwithstanding the husbands of the pensioners may have drawn pensions after that period.

This decision was repealed by a *proviso* of the appropriation act of 30th June, 1845, viz.:

"*Provided*, That no pension shall hereafter be granted to a widow for the same time that her husband had received one."

This was amended by the passage of the joint resolution of 23d January, 1845, viz. :

A RESOLUTION explanatory of "An act making appropriations for the payment of revolutionary and other pensions of the United States for the fiscal year ending the thirtieth of June, one thousand eight hundred and forty-five."

APPROVED, JANUARY 23, 1845.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act making appropriations for the payment of revolutionary and other pensions of the United States for the fiscal year ending on the thirtieth of June, one thousand eight hundred and forty-five," shall not be so construed as in any way to affect the claims of those widows whose application for a pension, or an arrear of pension, at the passage of this resolution, shall have been made and filed in the Pension Office, awaiting the decision of the Commissioner of Pensions thereon.*

The pensions allowed under act of 7th July, 1838, *all* expired by limitation on the 4th March, 1841, from which date, up to 4th March, 1843, no pensions were allowed to widows whose marriage took place after the expiration of the husbands' service. Under the act of 3d March, 1843, the benefits of the act of 7th July, 1838, were continued for one year to those widows who were entitled under the act of 1838.

AN ACT granting a pension to certain revolutionary soldiers.

APPROVED, MARCH 3, 1843.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the widow of any person who served in the war of the revolution in the manner set forth in the act approved the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the Act for the relief of certain surviving officers and soldiers of the revolution," and whose widow, in virtue of an act approved the seventh day of July, eighteen hundred and thirty-eight, entitled "An act granting half-pay and pensions to certain widows," and an act approved the twenty-third day of August, eighteen hundred and forty-two, amendatory thereof, and a resolution approved the sixteenth day of August, eighteen hundred and forty-two, entitled "A resolution declarative of the pension act of July seventh, eighteen hundred and thirty-eight," received, or is entitled to, an annuity or pension for the term of five years from the fourth of March, eighteen hundred and*

thirty-six, shall be entitled to receive the same annuity or pension which she received, or is entitled to receive, under said acts or said resolution, or either of them, for and during the future term of one year from the fourth day of March, eighteen hundred and forty-three, or during such portion of said term as said widow shall survive, subject in all respects, however, to the rules, limitations, and conditions, in and by said acts and resolutions made and provided.

SEC. 2. *And be it further enacted*, That the sum of three hundred and eighty thousand dollars be, and the same is hereby, appropriated, out of any money in the treasury not otherwise appropriated, to pay the annuities or pensions in and by this act granted.

The act of 3d March, 1843, was continued for four years after 4th March, 1844 ; by act of 17th June, 1844.

AN ACT to continue the pension of certain widows.

Act of March 3, 1843, granting pensions to widows, extended for four years from March 4, 1844. Widows entitled to benefit of act of July 7, 1838, to have the benefit of this act.

APPROVED, JUNE 17, 1844.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the act granting pensions to the widows of certain revolutionary soldiers, approved the third day of March, one thousand eight hundred and forty-three, be and the same is hereby revived and extended from and during the term of four years from and after the fourth day of March, one thousand eight hundred and forty-four, to have the same effect as if said act had been a grant of pensions for five years instead of one year from and after the fourth day of March, one thousand eight hundred and forty-three.

SEC. 2. *And be it further enacted*, That such widows as have been or shall be admitted by special acts of Congress to the benefit of the pension act approved the seventh day of July, one thousand eight hundred and thirty-eight, or to the benefit of the act hereby revived and extended, shall be entitled and shall be admitted to the benefit of this act ; subject, however, to the rules, limitations, and conditions in and by said acts prescribed.

The benefits of the foregoing acts of 1838, 1843 and 1844, were extended to those widows whose husbands died after the passage of those acts, by the following joint resolution :

JOINT RESOLUTION explaining the act of seventh July, eighteen hundred and thirty-eight, March third, eighteen hundred and forty-three, and June seventeenth, eighteen hundred and forty-four.

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APPROVED, MARCH 3, 1851.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the benefits of the acts of July seventh, eighteen hundred and thirty-eight, granting pension for five years; of the act of March third, eighteen hundred and forty-three, granting pensions for one year; and of the act of June seventeenth, eighteen hundred and forty-four, extending the act of March third, eighteen hundred and forty-three, for the term of four years, to certain widows, shall not be withheld from any widow whose husband died since the passage of either of said acts, if said widow shall be otherwise entitled to the same: Provided, That no pension shall be granted to said widow for the same time her husband received one.*

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The acts of 1843 and 1844 above recited, grant *no original* pension. No widow is entitled to a pension under them, who is not entitled under the act of 7th July, 1838.

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### RULES AND REGULATIONS.

The following rules, prescribed by the President of the United States, were adopted by the Secretary of War, in order to carry into effect the act of Congress of the 7th July, 1838, entitled "An act granting half-pay and pensions to certain widows."

1. Applicants must produce the best proof the nature of the case will allow, as to the service of the deceased officer or soldier, and the time when he died. It must be clearly shown in what troop or company, and regiment or corps, he served, and the grade he held. Proof as to service must be had, either from the records of the War Department, the muster rolls, the testimony of the commissioned officers, or the affidavits of persons of known respectability. Every applicant will make a declaration according to the subjoined form before a court of record, setting forth, according to the best of her knowledge or belief, the name and rank of the person on account of whose service the claim is presented; the day, month, and year (if possible) when he entered the service, and the time when he left the same; and, if under more than one engagement, the claimant must specify the particular periods, and the rank and name of the officers under whom the service was performed; the town or county, and State, in which he resided when he entered

the service ; whether he was drafted, was a volunteer, or a substitute ; the battles, if any, in which he was engaged ; the country through which he marched, with such further particulars as may be useful in the investigation of the claim ; and, also, if the fact be so, that the claimant has no documentary evidence in support of the claim. From the best sources of information evidence must be derived as to the period of the death of the officer or soldier.

2. The legality of the marriage, and the time when it took place, must be clearly established ; and it must also be shown that the widow was never afterwards married. Record proof, as to the marriage, is always required whenever it can be obtained. In a case where the town, county, parish, or family records afford no proof as to the period when the marriage took place, the fact must be established by the testimony of one or more respectable persons, whose credibility must be certified by the officer who may administer the oath. And, in order to prevent any mistake or improper use that may be made of the affidavit of an officer who may have the custody of records, from which he may make transcripts of the record in relation to a marriage, the officer who may give his affidavit will, instead of copying the figures contained in the record, certify "that it is a true copy of the record, with the exception of the date, which is expressed on the record in fair legible figures, as follows:" [Here copy the day, month, and year, in letters and figures, in exact conformity with the original.] Then let him add the following words :

"I, A. B., above named, depose and say, that I hold the office of ..... in the county, town, and State aforesaid, and that the above is a true extract from the records of said ..... with the exception above named, as certified by me.

A. B. Clerk of the .....

(or rector, or pastor, as the case may be.)

Sworn before me,  
C. D., Justice of the Peace."

And then will follow the certificate of the proper officer, under his seal of office, as to the official character and signature of the magistrate who may administer the oath. Where no record proof exists, other than the family record, the original record must be produced and sworn to by the person in whose possession it has been kept.

3. In a case where the service of the deceased officer or soldier is clearly proved by record, or documentary evidence, or the affidavit of a commissioned officer, showing the grade and length of service of the deceased, the particulars in relation to the service are not required to be set forth in the claimant's declaration ; but she must swear, in positive

terms, that she is the widow of the person whose service is thus proved. And no claim whatever can be sustained without positive proof of service.

4. In every case in which the deceased officer or soldier was a pensioner the fact should be so stated, and the deceased pensioner so described, as to enable the department to refer immediately to the evidence upon which he was pensioned, and thus facilitate the investigation of the claim of the widow.

5. Applicants unable to appear in court by reason of bodily infirmity may make the declaration before required before a judge or justice of a court of record of the county in which the applicant resides, and the judge or justice will certify that the applicant cannot from bodily infirmity attend the court.

6. Whenever any official act is required to be done by a judge or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State or of the Territory, or of the proper officer or clerk of the court or county, under his seal of office, will be annexed, stating that such a person is a judge or a justice of a court of record, or a justice of the peace, and that the signatures annexed is his genuine signature.

7. The widows of those who served in the navy, or as Indian spies, will produce proof, as nearly as may be, conformably to the preceding regulations, and authenticated in a similar manner, with such variations as the different nature of the service may require.

The declaration of the widow who claims must be made, in all cases, in open court, unless she is prevented by bodily infirmity from appearing before the court.

It must, in all cases, be shown in what year the husband died. The testimony on this point must be positive, and the language must be free from all ambiguity.

The family record must be sent to the Pension Office, if there be no other record, accompanied by the oath of the person in whose possession it has been kept. The person who must swear to the genuineness of the record should give the name of the person in whose handwriting the record was made.

A declaration made before a justice of the peace cannot be admitted as evidence.

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#### DECLARATION.

In order to obtain the benefit of the act of Congress of the 7th July, 1838, entitled "An act granting half-pay and pensions to certain widows."




STATE, TERRITORY, OR DISTRICT } ss  
OF .....

On this..... day of ..... personally appeared before the.....  
of the..... A. B., a resident of ..... in the county of .....  
aged ..... years, who being first duly sworn, according to law, doth, on her  
oath, make the following declaration, in order to obtain the benefit of the  
provision made by the act of Congress, passed July 7, 1838, entitled "An act  
granting half-pay and pensions to certain widows." That she is the widow of  
..... who was a [here insert the rank the husband held in the army,  
navy, or militia, as the case may be, and specify the service performed, as  
directed in the rule numbered one of these regulations.]

She further declares that she was married to the said..... on the  
..... day of ..... in the year seventeen hundred and.....  
that her husband, the aforesaid ..... died on the..... day of .....  
that she was not married to him prior to his leaving the service, but the mar-  
riage took place previous to the first of January, seventeen hundred and ninety-  
four, viz., at the time above stated. She further swears that she is now a widow,  
and that she has never before made any application for a pension.

Sworn to and subscribed on the day and year above written, before—

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 For Forms of Declaration under this Act, for *Widows, Heirs, or Administrators*, see pages 34 to 39 inclusive—substituting the words "Act of July 7, 1838," etc., for "Act of June 7, 1832."



# **REVOLUTIONARY PENSIONS.**

## **PENSIONS FOR WIDOWS.**

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**ACTS OF FEBRUARY 2, 1848, AND JULY 29, 1848.**

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## WIDOWS' PENSION ACT OF FEB. 2, 1848, AND JULY 29, 1848.

AN ACT making further provisions for surviving widows of the soldiers of the revolution.

Provision for widows of revolutionary soldiers: Pension to cease on marriage. This act extended to widows who are pensioners by special acts.

APPROVED, FEBRUARY 2, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any person who served in the war of the revolution in the manner specified in the act passed the seventh day of June, eighteen hundred and thirty-two, entitled "An act supplementary to the act for the relief of certain surviving officers and soldiers of the revolution," have died, or shall hereafter die, leaving a widow, whose marriage took place before the first day of January, one thousand seven hundred and ninety-four, such widow shall be entitled to receive, for and during her natural life, from and after the fourth day of March, eighteen hundred and forty-eight, the annuity or pension which might have been allowed to her husband, in virtue of said act, if living at the time it was passed, under the same rules, regulations, and restrictions as are prescribed in the act approved July seventh, eighteen hundred and thirty-eight, entitled "An act granting half-pay and pensions to certain widows:" *Provided,* That in the event of the marriage of such widow, said annuity or pension shall be discontinued.

SEC. 2. *And be it further enacted,* That such widows as have been admitted by special acts of Congress to the benefits of the pension act approved the seventh day of July, one thousand eight hundred and thirty-eight, or to the benefit of the act approved the seventeenth of June, one thousand eight hundred and forty-four, shall be entitled, and shall be admitted to the benefit of this act: subject, however, to the rules, limitations, and restrictions in and by said acts prescribed.

This act is in some respects a continuation of the acts of July 7th, 1838, March 3d, 1843, and June 17th, 1844. In case the benefit of the act of 1838 is required, the declaration should claim the benefit of those acts as well as that of the above.

By decision of the Secretary of the Interior, of 6th June, 1850, widows whose husbands lived until after June 7, 1832, are entitled under this act, in case they are otherwise within its provisions.

In case the widow lived until after July 29, 1848, it is advised that her declaration be made under that act, as in some cases it is more beneficial; for instance, if her husband was a pensioner under act of 1818 as a private, he received \$96 per annum; under the act of February 2d, 1848, proof of two years service of her husband would entitle the widow to but \$80 a year; under act of July 29th, 1848, she would be "*entitled to the same pension that her husband would be entitled to under existing laws, were he living.*"

The following is the act of 29th July, 1848:

AN ACT for the relief of certain surviving widows of officers and soldiers of the revolutionary army.

APPROVED, JULY 29, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the widows of all officers, non-commissioned officers, musicians, soldiers, mariners or marines, and Indian spies, who shall have served in the continental line, state troops, volunteers, militia, or in the naval service, in the revolutionary war with Great Britain, shall be entitled to a pension during such widowhood, of equal amount per annum that their husbands would have been entitled to, if living, under existing pension laws; to commence on the fourth day of March, eighteen hundred and forty-eight, and to be paid in the same manner that other pensions are paid to widows; but no widow now receiving a pension shall be entitled to receive a further pension under the provisions of this act; and no widow married after the first day of January, one thousand eight hundred, shall be entitled to receive a pension under this act.

SEC. 2. *And be it further enacted, That* any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest, in any way granted by this act, shall be utterly void and of no effect, nor shall the annuities or pension granted by this act be liable to attachment, levy, or seizure by any process of law or equity, but shall inure wholly to the personal benefits of the pensioner or annuitant entitled to the same. The same rules of evidence, regulations, and prescriptions shall apply and govern the Commissioner of Pensions and pension agents under this act as now prevail under existing pension laws which relate to widows of revolutionary officers and soldiers.

SEC. 3. *And be it further enacted, That* this act shall take effect immediately.



# REVOLUTIONARY PENSIONS.

## PENSIONS FOR WIDOWS.

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ACT OF FEBRUARY 3, 1853.

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This act provides Pensions to the surviving widows of the officers, non-commissioned officers, musicians and privates of the Revolutionary *Army*, who were married *subsequent* to January 1800.

The widow is entitled to the same amount of pension that her husband *would be entitled to* under existing laws, were he living.

The pension commences on the 3d of February, 1853, and continues during the life of the widow, unless she should again marry; in which case, it ceases at the time of such marriage.

By a special act of Congress the rule of the office, excluding the claims of widows who have married since the death of the husband on account of whose service the pension is claimed, has been rescinded, and they are now entitled; *provided* they are widows at the time of making application.

The widows of persons who served in the navy or marines are not entitled to the benefits of this act, even if their husbands were pensioners, under prior acts.

## WIDOWS' PENSION ACT OF FEBRUARY 3, 1853.

AN ACT to continue half-pay to certain widows and orphans.

APPROVED, FEBRUARY 3, 1853.

SEC. 2. *And be it further enacted,* That the widows of all officers, non-commissioned officers, musicians, and privates, of the revolutionary army who were married subsequent to January, A.D. eighteen hundred, shall be entitled to a pension in the same manner as those who were married before that date.

## REGULATIONS AND FORMS.

Under the provisions of the 2d section, the widows of all officers, non-commissioned officers, musicians and privates of the revolutionary army, who were married subsequent to January, A.D. 1800, are entitled to a pension in the same manner as those who were married before that date.

In applications for the benefit of these provisions, the party must prove the service of the officer or soldier in whose right she claims; her marriage with such officer or soldier, and his death.

In case such officer or soldier has received a pension in his lifetime, a reference to the evidence filed in his application will be sufficient to prove the service.

Every applicant will make a declaration according to the form hereto appended, before a Court of Record, setting forth, according to the best of her knowledge or belief, the name and rank of the person on account of whose service the claim is asserted; the time when he entered and left the service; the names and rank of the officers under whom the service was performed; the place in which he resided when he entered the service; the time and place of his death; that she was lawfully joined in marriage with said officer or soldier, and that she is now a widow.

In case such officer or soldier was a pensioner, that fact should be also stated, as well as the act under which he was pensioned, and the agency at which he was paid.

If the applicant is unable to appear in court by reason of bodily infirmity, she may make the declaration before a judge or justice of a Court of Record of the county in which she resides, and the judge or justice shall certify that the applicant from bodily infirmity is unable to attend court.

The official character of the magistrate or other person,



before whom any papers are verified, should be authenticated in the usual form.

FORM OF DECLARATION,

In order to obtain the benefits of the 2d section of the act of 3d February, 1853.

STATE OF ..... } In open Court Term, 18...  
COUNTY OF ..... } ss. Present

On this ..... day of ..... A.D. 185..., before the Court of ..... held within and for the County and State aforesaid, personally appeared ..... aged ..... years, a resident of ..... in the County of ..... and State of .....; who being duly sworn according to law, doth, on her oath, make the following declaration in order to obtain the benefit of the provision made by the act of Congress, passed on the 3d February, 1853, granting pensions to widows of persons who served during the Revolutionary War; that she is the widow of ..... deceased, who was a ..... in the company ..... commanded by Captain ..... in the regiment ..... commanded by ..... in the War of the Revolution ..... To the best of her information and belief, her husband entered the service at ..... about the ..... day of ..... A.D. 17...; for the term of ..... and continued in actual service in said War, for the term of ..... and was honorably discharged at ..... on the ..... day of ..... A.D. 17...; that her said husband was a pensioner of the United States under act of ..... at the rate of \$..... per annum, which was paid to him at the agency in ..... in the state of ..... She further states that she was married to the said ..... in ..... State of ..... on the ..... day of ..... A.D. 18...; by one ..... a .....; and that her name before her said marriage was .....; that her husband died at ..... on the ..... day of ..... A.D. 18... That she was not married to him prior to the second of January eighteen hundred, but at the time above stated, and she further states that there is ..... public record of her marriage—aid that there is ..... private record of her marriage ..... That she cannot file herewith his Certificate of discharge for the reason that ..... and further she declares that she is now a widow.

She hereby appoints ..... her true and lawful Attorney, with power of substitution, to prosecute this her claim for a pension, to receive the Certificate when issued, and to do all other acts necessary and proper in the premises.

WITNESS : .....

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent ..... and believe her to be as is above stated, and that she is of the age above stated; and further, that I am not interested in this her claim as Attorney or otherwise.

Witness my hand and the seal of said court affixed by order of said court now in session. ....

STATE OF ..... }  
COUNTY OF ..... } ss.

On this ..... day of ..... A.D. 185..., personally appeared before the subscriber, a Justice of the Peace, in and for the County aforesaid, duly authorized to administer oaths, ..... a resident of said County, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs. ...., the above named applicant for a pension—that he has known her for ..... years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be the “.....” and printed in the year .....; and that the said record, as far as relates to the marriage of the said applicant and the soldier above named, and of his death,

is as follows, and is an exact and true copy of all the entries in the said record :  
 ..... and that the said deponent is not interested  
 in the claim.

SUBSCRIBED AND SWORN TO, the day and year first  
 above written, before me, and I certify that I am in no  
 manner interested.

Justice of the Peace.

STATE OF ..... } ss.  
 COUNTY OF .....

On this.....day of .....A.D. 185... personally appeared before me,  
 the undersigned, a Justice of the Peace, in and for said County, .....  
 .....and.....who are to me well known, and who are  
 credible witnesses, and who being by me duly sworn, depose and say, that they  
 are each well acquainted with Mrs. ....the above applicant for a pen-  
 sion—that they have known her for.....years last past. That they were ac-  
 quainted with.....her late husband, having known him for.....  
 years previous to his death ; that they, the said.....and.....  
 .....lived together as husband and wife, and were reputed so to be ; that  
 deponents never heard the fact of their marriage disputed or questioned. That  
 the said.....died on the.....day of.....18...; and  
 the said.....has been since that day, and still is reputed to  
 be his widow, which deponents believe to be the fact. That she has never mar-  
 ried since her said husband's death ; and still is his widow,\* and that her said hus-  
 band was the identical man mentioned as a pensioner in her declaration above ;  
 and further, that they were present and saw.....execute  
 the foregoing affidavit by .....to the foregoing declaration,  
 and making oath thereto in due form of law, and that they, deponents, do reside  
 in the County aforesaid.

WITNESS,.....

SWORN TO AND SUBSCRIBED before me, this.....day of .....A.D. 18..  
 .....J. P.

STATE OF ..... } ss.  
 COUNTY OF .....

I HEREBY CERTIFY, that.....Esq., before whom the foregoing  
 Affidavits and Power of Attorney were made and acknowledged, and who has  
 thereunto subscribed his name, was at the time of so doing a Justice of the  
 Peace, in and for the County aforesaid, duly commissioned and sworn, and that  
 his signatures thereto are genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of  
 .....Court, for the County aforesaid, this ..... day of .....185..  
 .....Clerk of

\* See remarks page 69.

## REVOLUTIONARY PENSIONS.

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### CONTINENTAL HALF-PAY AND COMMUTATION.

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There being no law providing for the adjustment of claims for the continental half-pay and commutation promised by the following resolutions: all claims for relief must be presented to Congress.

### HALF-PAY—REVOLUTIONARY WAR.

[Half-pay for seven years, after the conclusion of the war, promised to all military officers who shall continue in the army to the end of the war.]

RESOLUTION—IN CONGRESS, MAY 15, 1778.

*Resolved, unanimously,* That all military officers commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, and not hold any office of profit under these States, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they live so long, one half of the present pay of such officer: provided that no general officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one-half part of the pay of a colonel of such corps respectively; and provided that this resolution shall not extend to any officer in the service of the United States, unless he shall have taken an oath of allegiance to, and shall actually reside within some one of the United States.

[Half-pay for life granted to officers continuing in service to the end of the war.]

RESOLUTION—IN CONGRESS, OCTOBER 21, 1780.

*Resolved,* That the officers who shall continue in the service to the end of the war, shall also be entitled to half-pay during life, to commence from the time of their reduction.

[Half-pay to certain officers changed to certain rates of compensation.]

RESOLUTION—IN CONGRESS, JANUARY 17, 1781.

*Resolved,* That all officers in the hospital department and medical staff, hereinafter mentioned, who shall continue in service to the end of the war, or be reduced before that time, as supernumeraries, shall be entitled to, and receive, during life, in lieu of half-pay, the following allowance, viz:

The director of the hospital equal to the half-pay of a lieutenant colonel.

Chief physicians and surgeons of the army and hospitals, and hospital physicians and surgeons, purveyor, apothecary, and regimental surgeons, each equal to the half-pay of a captain.

[Half-pay forbidden except to those officers to whom it is heretofore promised.]

RESOLUTION—IN CONGRESS, JANUARY 26, 1784.

On the report of a committee, consisting of Mr. William-

son, Mr. Tilton, and Mr. Monroe, to whom were referred a memorial of Joseph Ward, and a petition of R. Forthingham.

*Resolved*, That half-pay cannot be allowed to any officer, or to any class or denomination of officers, to whom it has not heretofore been expressly promised.

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The half-pay promised by the foregoing resolutions was by resolution of March 22d, 1783, commuted into five years full pay, viz :

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COMMUTATION FOR FIVE YEARS' FULL PAY, IN LIEU OF  
HALF-PAY FOR LIFE.

RESOLUTION—IN CONGRESS, MARCH 22, 1783.

On the report of a committee, consisting of Mr. Hamilton, Mr. Dyer, and Mr. Bedford, to whom was referred a motion of Mr. Dyer, together with the memorial of the officers of the army, and the report of the committee thereon, Congress came to the following resolutions :

1. Whereas the officers of the several lines under the immediate command of his excellency General Washington, did, by their late memorial, transmitted by their committee, represent to Congress that the half-pay granted by sundry resolutions was regarded in an unfavorable light by the citizens of some of these States, who would prefer a compensation for a limited term of years, or by a sum in gross to an establishment for life ; and did, on that account, solicit a commutation of their half-pay for an equivalent in one of the two modes above mentioned, in order to remove all subjects of dissatisfaction from the minds of their fellow-citizens : and whereas Congress are desirous as well of gratifying the reasonable expectations of the officers of the army, as removing all objections which may exist, in any part of the United States, to the principle of the half-pay establishment, for which the faith of the United States hath been pledged ; persuaded that those objections can only arise from the nature of the compensation, not from any indisposition to compensate those whose services, sacrifices, and sufferings, have so just a title to the approbation and rewards of their country :

2. *Therefore, resolved*, That, such officers as are now in service, and shall continue therein to the end of the war, shall be entitled to receive the amount of five years' full pay in money, or securities on interest at six per cent, per annum,

as Congress shall find most convenient, instead of the half-pay promised for life by the resolution of the 21st day of October, 1780 ; the said securities to be such as shall be given to other creditors of the United States : provided, it be at the option of the lines of the respective States, and not of officers, individually, in those lines, to accept or refuse the same ; and provided, also, that their election shall be signified to Congress through the commander-in-chief, from the lines under his immediate command, within two months, and through the commanding officer of the southern army, from those under his command, within six months, from the date of this resolution :

3. The same communication shall extend to the corps not belonging to the lines of particular States, and who are entitled to half-pay for life, as aforesaid ; the acceptance or refusal to be determined by corps, and to be signified in the same manner, and within the same time, as above mentioned :

4. That all officers belonging to the hospital department, who are entitled to half-pay by the resolution of the 17th day of January, 1781, may collectively, agree to accept or refuse the aforesaid commutation, signifying the same through the commander-in-chief, within six months from this time ; that such officers as have retired at different periods, entitled to half-pay for life, may collectively, in each State of which they are inhabitants, accept or refuse the same ; their acceptance or refusal to be signified by agents authorized for that purpose, within six months from this period ; that with respect to such retiring officers, the commutation, if accepted by them, shall be in lieu of whatever may be now due to them since the time of their retiring from service, as well as of what might hereafter become due ; and that so soon as their acceptance shall be signified, the superintendent of finance be, and he is hereby, directed to take measures for the settlement of their accounts accordingly, and to issue to them certificates, bearing interest at six per cent. That all officers entitled to half-pay for life, not included in the preceding resolution, may also, collectively, agree to accept or refuse the aforesaid commutation signifying the same within six months from this time.

[Certain officers entitled to half-pay or commutation.]

RESOLUTION—IN CONGRESS, MARCH 8, 1785.

*Resolved*, That the officers who retired under the resolve of December 31, 1781, are, equally, entitled to the half-pay or commutation, with those officers who retired under the resolves of October 3 and 21, 1780.

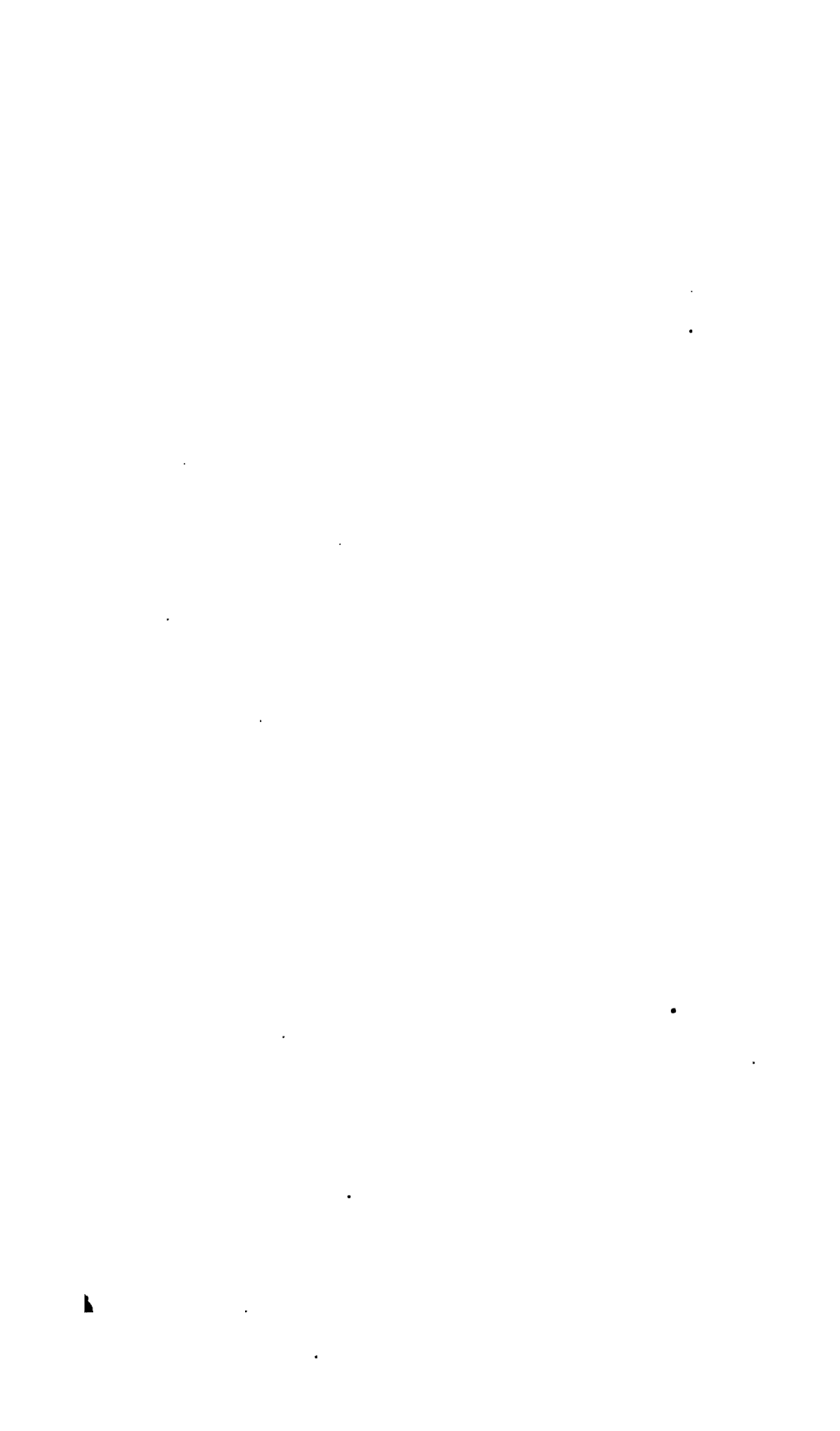
## HALF-PAY TO WIDOWS OF OFFICERS OF THE REVOLUTION.

[Half-pay for seven years granted to officers, etc., extended to widows and orphans of those officers, etc.]

RESOLUTION—IN CONGRESS, AUGUST 24, 1780.

*Resolved*, That the resolution of May 15, 1778, granting half-pay for seven years to the officers of the army who should continue in service to the end of the war, be extended to the widows of those officers who have died, or shall hereafter die, in the service; to commence from the time of such officers' death, and continue for the term of seven years; or, if there be no widow, or in case of her death or intermarriage, the said half-pay be given to the orphan children of the officer dying as aforesaid, if he shall have left any; and that it be recommended to the Legislatures of the respective States to which such officers belong, to make provision for paying the same on account of the United States:

That the restricting clause in the resolution of May 15, 1778, granting half-pay to the officers for seven years, expressed in these words, viz: "and not hold any office of profit under these States, or any of them," be, and is hereby, repealed.





## **VIRGINIA HALF-PAY.**

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**UNDER ACT OF JULY 5, 1832, "TO PROVIDE FOR LIQUID-  
ATING AND PAYING CERTAIN CLAIMS OF THE STATE OF  
VIRGINIA."**

## VIRGINIA HALF-PAY.

AN ACT to provide for liquidating and paying certain claims of the State of Virginia.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of American Congress assembled,* That the proper accounting officers of the Treasury do liquidate and pay the accounts of the Commonwealth of Virginia against the United States, for payments to the officers commanding in the Virginia line in the war of the revolution, on account of the half-pay for life promised the officers aforesaid by that Commonwealth, the sum of one hundred and thirty-nine thousand five hundred and forty-three dollars and sixty-six cents.

SEC. 2. *And be it further enacted,* That the Secretary of the Treasury be, and he is hereby, required and directed to pay to the State of Virginia the amount of the judgments which have been rendered against the said State, for and on account of the promise contained in an act passed by the General Assembly of the State of Virginia, in the month of May, Anno Domini one thousand seven hundred and seventy-nine, and in favor of the officers or representatives of officers of the regiments and corps hereinafter recited, and not exceeding in the whole the sum of two hundred and forty-one thousand three hundred and forty-five dollars, to wit:

*First.* To the officers, or their legal representatives, of the regiment commanded by the late Colonel George Gibson, the amount of the judgments which they have obtained, and which are now unsatisfied.

*Second.* To the officers, or their legal representatives, of the regiment denominated the second State regiment, commanded, at times, by Colonels Brent and Dabney, the amount of the judgments which they have obtained, and which are now unsatisfied.

*Third.* To the officers or the legal representatives, of the regiments of Colonels Clark and Crockett, and Captain Roger's troop of cavalry, who were employed in the Illinois service, the amount of the judgments which they have obtained, and which are now unsatisfied.

*Fourth.* To the officers, or their legal representatives, serving in the regiment of State artillery commanded by the late Colonel Marshall, and those serving in the State garrison regiment commanded by Colonel Muter, and serving in the State cavalry commanded by Major Nelson, the amount of the judgments which they have obtained, and which are now unsatisfied.

*Fifth.* To the officers, or their legal representatives, who served in the navy of Virginia during the late war of the revolution, the amount of the judgments which they have obtained, and which are now unsatisfied.

SEC. 3. *And be it further enacted,* That the Secretary of the Treasury be, and he is hereby directed and required, to adjust and settle those claims for half-pay of the officers of the aforesaid regiments and corps, which have not been paid or prosecuted to judgments against the state of Virginia, and for which said State would be bound on the principles of the half-pay cases already decided in the Supreme Court of Appeals of said State; which several sums of money herein directed to be settled or paid shall be paid out of any money in the Treasury not otherwise appropriated by law.

[Approved, July 5, 1832.]

The acts of the Virginia Legislature giving the half-pay which is assumed by the foregoing act, may be found in 10th Henning's Statutes at large, pages 25—298 and 467. They are as follows:—

AN ACT concerning officers, soldiers, sailors, and marines.

All general officers of the army, being citizens of this Commonwealth, and all field-officers, captains, and subalterns, commanding, or who shall command in the battalions of this Commonwealth on continental establishment, or serving in the battalions raised for the immediate defence of this State, or for defence of the United States; and all chaplains, physicians, surgeons, and surgeons' mates, appointed to the said battalions, or any of them, being citizens of this Commonwealth, and not being in the service of Georgia or of any other State, provided Congress do not make some tantamount provision for them, who shall serve henceforward, or from the time of their being commissioned, until the end of the war; and all such officers who have or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half-pay during life, to commence from the determination of their command or service.

[May Session, 1779. 10 Henning's Statutes at large, page 25.]

AN ACT putting the eastern frontier of this Commonwealth into a posture of defence.

And, whereas, experience has evinced the great utility of marines, *Be it enacted,* That a body of three hundred men be recruited for that purpose, to be commanded by five captains and fifteen lieutenants, the said captains and subalterns to be appointed by the executive. *And be it further enacted,* That the said captains, together with the subalterns, and all other commissioned officers in the service of the navy, the master, surgeon, and surgeon's mate, shall be entitled to the same pay and rations, the same privileges and emoluments, and rank in the same degree with officers of the like rank belonging to regiments heretofore raised for the internal defence of this State.

[May Session, 1780. 10 Henning's Statutes at large, p. 298.]

AN ACT to adjust and regulate the pay and accounts of the officers and soldiers of the Virginia line or continental establishment, and also of the officers, soldiers, sailors, and marines, in the service of the State, and for other purposes.

SEC. 10. *And whereas,* by the reduction of the battalions and corps in the

State service, a considerable number of officers have become supernumerary ; *Be it enacted*, That a return of all the State officers shall be made to the next Assembly, wherein the corps, the rank of each officer, the date of his commission, the number of men at first raised in each corps, number of men when reduced, and time when reduced, shall be particularly specified by the executive ; and the executive are hereby empowered and required to set on foot proper enquiries to discriminate such officers as by unworthy conduct, or by any means whatever, be thought unfit to be considered as entitled to half-pay.

SEC. 13. *And be it further enacted*, That the same indulgences and advantages given to the State infantry, shall be and are hereby given to the officers and soldiers of the State cavalry, and on the same terms.

SEC. 14. *And be it further enacted*, That the officers and seamen of the navy, of this State, as they stand arranged by a late regulation, shall be entitled, to the same advantages as the officers belonging to this State in the land service, agreeable to their respective ranks.

[November Session, 1781. 10 Henning's Statutes at large, p. 467.]

Claims under this act are not affected by the 4th section of the act of 3d March, 1845 ; which is as follows, viz :

"From and after the passage of this act, no accounts which have been adjusted by the accounting officers of the treasury shall be re-opened without authority of law ; nor shall the accounting officers of the treasury act upon any account which shall not be presented within six years from the date when the claim first existed, unless the person having the claim was an infant, lunatic, or *femme covert*, and then within six years after disability ; provided, that this section shall not apply to cases where special acts have passed, or shall pass, for the relief of individuals."—*Opinion Attorney General*, April 22, 1845.

By the act of 5th July, 1832, Congress only authorized the half-pay to be given when the officer had not by some act of his own elected to accept the substitute offered by the resolve of 22d March, 1783.

*Opinion Attorney General*, March 21, 1833.

An officer, who obtained a judgment against the State of Virginia for the commutation or half-pay, cannot claim under the act of 5th July, 1832, nor can any officer who elected to receive commutation, now receive the half-pay

DEPARTMENT OF THE INTERIOR, *January 27, 1852.*

SIR : I herewith return the papers relating to the claim of William Reynolds for half-pay under the act of July 5th, 1832, having examined the question last presented, whether or not he is entitled under the act to half the pay which he received as Director of the State Laboratory, or only to half of that which his linear rank as Lieutenant of Artillery gave him ?

By the act of 5th July, 1832, the Secretary of the Treasury, and by subsequent laws the Commissioner of Pensions and this Department, are required to adjust and settle claims of this character "on the principles of the half-pay cases already decided in the Supreme Court of Appeals" of the State of Virginia. That court has decided, in the case of staff officers, that the "half-pay" contemplated by the Virginia act of 1779 and the act of Congress of July 5th, 1832, is to be taken as half, not merely of the amount received by such officer monthly, as an officer of the line, but of what-

ever other amount he was legally entitled to, at the termination of his services, by reason of any additional duty performed, or position occupied. By the application of this "principle" to the present case, I have arrived at the conclusion that Reynolds' claim must be settled in the same manner, and that his representative is now entitled to one-half of the pay which he received at the close of the war, he holding, in addition to his linear rank of Lieutenant of the State Artillery, the position of Director of the State Laboratory, and receiving additional pay as such.

COMMISSIONER OF PENSIONS.

A. H. H. STUART.

Rank of an officer dependent on his commission, and half-pay dependent on his rank.

WAR DEPARTMENT, June 15, 1844.

The cases of Peter Moore and Samuel B. Green—appeals from the decisions of Col. Edwards, Commissioner of Pensions.

The decisions of those two cases turn upon the same documents.

Both officers belonged to Col. Crockett's Virginia regiment during the war of the revolution.

Peter Moore has been recognized as having been a *lieutenant*, but it is alleged he was a *captain*.

Samuel B. Green is acknowledged to have been an *ensign*, but it is concluded he was a *lieutenant*.

Against those claims there have been decisions made by my predecessors in office. By these decisions I am bound. I can discover no new evidence to change, in any essential way, the characters of the two cases.

I have no doubt, after an inspection of the two reports—the one by Col. Crockett, and the other by the "board of officers"—that Mr. Moore was *entitled to be promoted to a captaincy*, and Mr. Green to a *lieutenancy*, but they never were promoted. The amount of "half-pay" depends on the *rank* of the officer, and that rank depends on the *commission*. I confess it would be otherwise, if the very ingenious argument of the Hon. Mr. Davis should prevail—that a military commission descends upon the *next in rank*, by *operation of law*, as land descends upon the heir on the death of the ancestor. In this way, the officer, instead of a commission, would have to carry about him the statute law of Virginia and the rules of descent of military commissions. The actual possession of the commission is the one essential thing; but the *mere claim* to it is a very different matter, and cannot be overlooked in the administration of our pension laws.

Opinion as to required citizenship of Virginia.

ATTORNEY GENERAL'S OFFICE, *February 9, 1836.*

SIR : In your communication of the 8th of December last, you inquire whether, in my opinion, *any* officers in the land service, not citizens of Virginia, were entitled to half-pay under the laws of that State; and you also put to me the like question in regard to the naval service.

I have looked into the statutes of Virginia, for the purpose of replying to your question.

The statute of May, 1779, ch. 6, (10 Henning's Stat. at large, p. 25,) on which the first question arises, provides that "all general officers of the army, *being citizens of this Commonwealth*, and all field-officers, captains, and subalterns commanding, or who shall command in the battalions of this Commonwealth, on continental establishment, or serving in the battalions raised for the immediate defense of this State, or for the defense of the United States; and all chaplains, physicians, surgeons, and surgeon's mates, *being citizens of this Commonwealth*, and not being in the service of Georgia or any other State, (provided Congress do not make some tantamount provision for them,) who shall serve henceforward, or from the time they are commissioned until the end of the war; and all *such* officers who have or shall become supernumerary on the reduction of any of the said battalions, and shall again enter into the said service, if required so to do, in the same or any higher rank, and continue therein until the end of the war, shall be entitled to half-pay during life, to commence from the determination of their command or service." \* \* \* \*

I am of opinion that the words expressing the qualification of citizenship ought not to be extended beyond the particular clauses to which they are joined. The application of this rule will produce the following results :

1. General officers of the army, and chaplains, physicians, surgeons, and surgeon's mates, to be entitled to the benefits of the law, must be citizens of the State of Virginia.

2. Field-officers, captains, and subalterns, who commanded in the battalions of Virginia on the continental establishment, or who served in the battalions raised for the immediate defense of the State, or of the United States; and all such officers who became supernumerary on the reduction of any of said battalions, and who again entered the service when required, in the same or any higher rank and continued therein until the end of the war, were entitled to the benefits of the law, although they were not citizens of Virginia.

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The act of May, 1780, ch. 27, (10 Henning's Stat. at large, p. 29S,) by which the question as to the naval service is to be determined, is in the following words: "*And be it further enacted*, That the said captains, together with the subalterns, and all other commissioned officers of the navy, the master, surgeon and surgeon's mates, shall be entitled to the same pay and rations, the same privileges and emoluments, and rank in the same degree with the officers of the like rank belonging to the regiments heretofore raised for the internal defense of the State."

The principles of interpretation above stated lead me still more satisfactorily, in regard to this branch of the service, to the conclusion that all the officers enumerated in the provision now quoted are entitled to half-pay, without reference to citizenship.

To the SECRETARY OF WAR.

B. F. BUTLER.





## INVALID PENSIONS.

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### INVALIDS OF THE REVOLUTIONARY WAR.

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By resolution of August 26, 1776, Congress provided pensions to the officers and soldiers of the army, and officers and sailors of the navy, who might be disabled in the service, to continue during their disability. All relative to invalid pensions were repealed by the act of April 10, 1806, which was continued in force until six years after the passage of the act of May 24, 1828, by which it was revived. Pensioners under these acts have been continued on the list and received their pensions, although no new law has since been passed for their relief.

It is presumed, that at this time, there are no persons living entitled to an original certificate under this act, were it in force. It is therefore deemed useless to insert any except the act of April 10, 1806.

AN ACT to provide for persons who were disabled by known wounds received in the revolutionary war.

[APPROVED, APRIL 10, 1806.]

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any commissioned or non-commissioned officer, musician, soldier, marine, or seaman, disabled in the actual service of the United States, while in the line of his duty, by known wounds received during the revolutionary war, and who did not desert the service; or who, in consequence of disability as aforesaid, resigned his commission or took a discharge; or who, after incurring disability as aforesaid, was taken captive by the enemy, and remained either in captivity or on parole, until the close of said revolutionary war; or who, in consequence of known wounds received as aforesaid, has at any period since, become and continued disabled in such manner as to render him unable to procure a subsistence by manual labor; whether such officer, musician, soldier, marine, or seaman, served as a volunteer, in any proper service against the common enemy, or belonged to a detachment of the militia, which served against the common enemy, or to the regular forces of the United States, or of any particular State, he shall, upon substantiating his claim, in the manner hereinafter described, be placed on the pension list of the United States, during life, or the continuance of such disability, and be entitled under the regulations hereinafter mentioned, to receive such sum as shall be found just and proper, by the testimony adduced.

SEC. 2. *And be it further enacted,* That, in substantiating such claim, the following rules and regulations shall be complied with, that is to say: All evidence shall be taken on oath or affirmation, before the judge of the district, or one of the judges of the territory in which such claimant resides, or before some person specially authorized by commission from said judge.

Decisive disability, the effect of a known wound or wounds, received while in the actual service and line of duty against the common enemy, during the revolutionary war, must be proved by the affidavit of the commanding officer of the regiment, corps, company, ship, vessel, or craft, in which such claimants served; or of two other credible witnesses to the same effect, setting forth the time when, and place where, such wound or wounds were received, and particularly describing the same.

The nature of such disability, and in what degree it prevents the claimant from obtaining his subsistence, must be proved.

by the affidavit of some reputable physician or surgeon, stating his opinion, either from his own knowledge and acquaintance with the claimant, or from an examination of such claimant on oath or affirmation ; which, when necessary for that purpose, shall be administered to said claimant by said judge or commissioner. And the said physician or surgeon, in his affidavit, shall particularly describe the wound or wounds from whence the disability appears to be derived.

Every claimant must prove, by at least one credible witness, that he continued in service during the whole time for which he was detached, or for which he engaged, unless he was discharged, or left the service in consequence of some derangement of the army, or, in consequence of his disability, resigned his commission ; or was, after his disability, in captivity or on parole, until the close of the revolutionary war. And in the same manner must prove his mode of life and employment since he left the service, and the place or places where he has since resided, and his place of residence at the time of taking such testimony.

Every claimant shall, by his affidavit, give satisfactory reasons why he did not make application for a pension before, and that he is not on the pension list of any State ; and the judge or commissioner shall certify, in writing, his opinion of the credibility of the witnesses, whose affidavits he shall take, in all those cases when, by this act, it is said the proof shall be made by a credible witness or witnesses ; and, also, that the examining physician or surgeon is reputable in his profession.

SEC. 3. *And be it further enacted*, That the said judge of the district, or person by him commissioned as aforesaid, shall transmit a list of such claims, accompanied by the evidence, affidavits, certificates, and proceedings had thereon in pursuance of this act, noting particularly the day on which the testimony was closed before him, to the Secretary for the Department of War, that the same may be compared with muster rolls, or other documents in his office ; and the said Secretary shall make a statement of all such cases, which, together with all the testimony, he shall, from time to time, transmit to Congress, with such remarks as he may think proper, that Congress may be enabled to place such claimants on the pension list as shall be found entitled to the privilege. And it shall be the duty of the judge, or commissioner aforesaid, to permit each claimant to take a transcript of the evidence and proceedings had respecting his claim, if he shall desire it, and to certify the same to be correct.

SEC. 4. *And be it further enacted*, That every pension, or increase thereof, by virtue of this act, shall commence on the day when the claimant shall have completed his testimony before the authority proper to take the same.

SEC. 5. *And be it further enacted*, That an increase of pension may be allowed to persons already placed upon the pension list of the United States, for disabilities caused by known wounds received during the revolutionary war, in all cases where justice shall require the same: *Provided*, That the increase, when added to the pension formerly received, shall in no case exceed a full pension.

Every invalid making application for this purpose, shall be examined by two reputable physicians or surgeons, to be authorized by commission from the judge of the district where such invalid resides; who shall report, in writing, on oath or affirmation, their opinion of the nature of the applicant's disability, and in what degree it prevents him from obtaining a subsistence by manual labor; which report shall be transmitted, by said physicians or surgeons, to the Secretary for the Department of War, who shall compare the same with documents in his office, and shall make a statement of all such cases, which, together with the original report, he shall, from time to time, transmit to Congress, with such remarks as he may think proper, that they may be enabled to do justice to such pensioners.

SEC. 6. *And be it further enacted*, That a full pension given by this act to a commissioned officer, shall be one-half of the monthly pay, legally allowed, at the time of incurring said disability, to his grade in the forces raised by the United States; and the proportions less than a full pension, shall be the correspondent proportions of said half-pay; and a full pension to a non-commissioned officer, musician, soldier, marine, or seaman, shall be five dollars a month, and the proportions, less than a full pension, shall be the like proportions of five dollars a month; but no pension of a commissioned officer shall be calculated at a higher rate than the half-pay of a lieutenant-colonel.

SEC. 7. *And be it further enacted*, That the pensions, or increase thereof, which may be allowed by this act, shall be paid in the same manner as pensions to invalids who have been heretofore placed on the pension list are now paid, and under such restrictions and regulations, in all respects, as are prescribed by law.

SEC. 8. *And be it further enacted*, That from and after the passage of this act, no sale, transfer, or mortgage, of the whole, or any part, of the pension payable to any non-com-

missioned officer, musician, soldier, marine, or seaman, before the same becomes due, shall be valid. And every person claiming such pension, or any part thereof, under power of attorney or substitution, shall, before the same is paid, make oath or affirmation, before some magistrate, legally authorized to take the same, a copy of which, attested by said magistrate, shall be lodged with the person who pays said pension, that such power or substitution is not given by reason of any transfer of such pension, or part thereof. And any person who shall swear or affirm falsely in the premises, and be thereof convicted, shall suffer as for wilful and corrupt perjury.

SEC. 9. *And be it further enacted*, That all laws of the United States heretofore passed, so far as they authorize persons to be placed on the pension list of the United States, for, and in consequence of, disabilities derived from known wounds received in the revolutionary war, shall be, and they are hereby, repealed: *Provided*, That nothing in this repealing clause shall injure, or in any way affect, those persons already upon the pension list of the United States; and that the Secretary for the Department of War shall proceed upon the testimony which has been transmitted to him by any claimant, before the passage of this act, in the same manner as though this act had never passed.

SEC. 10. *And be it further enacted*, That this act, so far as it authorizes the admission of persons upon the pension list of the United States, shall remain in force, for and during the space of six years from the passage thereof, and no longer: *Provided*, That this limitation shall not affect or impair the right of any invalid who may have completed his testimony, in the manner described by this act, before this limitation commences its operation, but which has not been transmitted to the Secretary for the Department of War.

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## ARMY INVALID PENSIONS.

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### MILITARY ESTABLISHMENT.

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The following are the various acts of Congress granting invalid pensions to officers and soldiers serving in the army of the United States, and of the volunteers and militia received and mustered into the service, since the close of the revolutionary war, who have been disabled by wounds, or otherwise, *while in the service*, and in the line of duty.

The rates of pension, by act of 24th April, 1816, are now uniform, and one form of application is sufficient. It is not necessary that the claimant should make his declaration under any particular act.

The forms following the decisions, will be found to be in accordance with the rules and requirements of the office respecting such applications: care being taken in framing them that no material omission can be made, in case they are used by the claimant.

## RATE OF INVALID PENSIONS, UNDER EXISTING LAWS.

Several of the pension acts restrict the highest rate of invalid pensions to a sum not exceeding the half-pay of a lieutenant-colonel; this restriction applies to all officers not mentioned in the following act:

[PASSED, APRIL 24, 1816.]

Increase of pension to every grade under that of Captain.

All persons of the ranks hereinafter named, who are now on the military pension roll of the United States, shall, from and after the passage of this act, be entitled to, and receive, for the disabilities of the highest degree, the following sums in lieu of those to which they are now entitled, to wit: a first lieutenant, seventeen dollars; a second lieutenant, fifteen dollars; a third lieutenant, fourteen dollars; an ensign, thirteen dollars; and a non-commissioned officer, musician, or private, eight dollars per month; and for disabilities of a degree less than the highest, a sum proportionably less. All persons of the aforesaid ranks, who may hereafter be placed on the military pension-roll of the United States, shall, according to their ranks and degrees of disabilities, be placed on at the aforesaid rate of pensions, in lieu of those heretofore established: *Provided*, That nothing herein contained shall be construed to lessen the pension of any person who, by special provision, is entitled to a higher pension than is herein provided.

AN ACT for regulating the military establishment of the United States.

APPROVED, APRIL 30, 1790.

SEC. 11. *And be it further enacted*, That if any commissioned officer, non-commissioned officer, private, or musician, aforesaid, shall be wounded or disabled, while in the line of his duty in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay and under such regulations as shall be directed by the President of the United States, for the time being: *Provided, always*, That the rate of compensation for such wounds or disabilities, shall never exceed, for the highest disability, half the monthly pay received by any commissioned officer at the time of being so wounded or disabled; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive only a sum in proportion to the highest disability.



AN ACT for continuing and regulating the military establishment of the United States, and for repealing sundry acts heretofore passed on that subject.

APPROVED MARCH 3, 1795.

SEC. 13. *And be it further enacted*, That if any officer, non-commissioned officer, private, or musician, aforesaid, shall be wounded or disabled, while in the line of his duty, in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States for the time being: *Provided, always*, That the rate of compensation to be allowed for such wounds, or disabilities, to a commissioned officer, shall never exceed, for the highest disability, half the monthly pay of such officer, at the time of his being so disabled or wounded; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

AN ACT for the relief of certain officers and soldiers, who have been wounded or disabled in the actual service of the United States.

APPROVED, MARCH 23, 1796.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That every commissioned [and] non-commissioned officer, private, or musician, who has been wounded or disabled, while in the line of his duty, in actual service, called out by authority of any law of the United States, while he belonged to the militia, or any volunteer not belonging to the militia, who has been wounded or disabled, while in the line of his duty, in actual service as aforesaid, shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States for the time being: *Provided*, The rate of compensation for such wounds and disabilities shall never exceed, for the highest disabilities half the monthly pay received by any commissioned officer, at the time of being so wounded or disabled; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month; and that all inferior disabilities shall entitle the person so disabled to receive only a sum in proportion to the highest disability: *And provided*, That these provisions shall not be construed to extend to any person wounded or disabled before the fourth of March, one thousand seven hundred and eighty-nine, nor to any per-

son wounded or disabled since that time, who has made application for a pension, under any existing law of the United States, and has been denied, or admitted, on the pension list: *And provided*, That all applications herein shall be made within one year after the end of the present session of Congress.

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AN ACT to ascertain and fix the military establishment of the United States.

APPROVED, MAY 30, 1796.

SEC. 19. *And be it further enacted*, That if any officer, non-commissioned officer, private, or musician, aforesaid, shall be wounded or disabled, while in the line of his duty, in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay, and under such regulations, as shall be directed by the President of the United States, for the time being: *Provided always*, That the rate of compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall never exceed, for the highest disability, half the monthly pay of such officer, at the time of his being so disabled or wounded; and that the rate of compensation to non-commissioned officers, privates, and musicians, shall never exceed five dollars per month: *And provided also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

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The act of May 28th, 1798; the act of March 2d, 1799, and of March 16th, 1802, authorizing an addition to the army, and fixing the "peace establishment" provide pension to invalids in like manner as the foregoing acts of Congress.

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AN ACT to raise for a limited time an additional military force.

APPROVED, APRIL 12, 1808.

SEC. 5. *Be it further enacted*, That the officers, cadets, non-commissioned officers, musicians, artificers, and privates, raised pursuant to this act, shall be entitled to the like compensation, in case of disability by wounds, and otherwise, incurred in the service, as the officers, cadets, non-commissioned officers, musicians, artificers and privates, in the present military establishment.

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AN ACT authorizing the President of the United States to raise certain companies of rangers, for the protection of the frontier of the United States.

APPROVED, JANUARY 2, 1812.

SEC. 4. *And be it further enacted*, That the officers, non-commissioned officers, and privates, raised pursuant to this

act, shall be entitled to the like compensation in case of disability, by wounds and otherwise, incurred in the service, as officers, non-commissioned officers, and privates, in the present military establishment, and with them shall be subject to the rules and articles of war, which have been established, or may hereafter by law be established; and the provisions of the act, entitled "An act fixing the military peace establishment of the United States," so far as they may be applicable, shall be extended to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same. This act shall take effect, and be in force, from and after the passage thereof, and continue in force for one year, and from thence to the end of the next session of Congress.

AN ACT to raise an additional military force.

APPROVED JANUARY 11, 1812.

SEC. 14. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pension, and under such regulations, as are or may be directed by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half-pay of a lieutenant-colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

AN ACT authorizing the President of the United States to accept and organize certain volunteer military corps.

APPROVED, FEBRUARY 6, 1812.

SEC. 5. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalid pensioners of the United States, at such rate of pension, and under such regulations, as are, or may be directed by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities to a commissioned officer shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being wounded or disabled;

and that no officer shall receive more than the half-pay of a lieutenant-colonel : And that the rate of pension to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month : *And provided, also,* That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

AN ACT for the relief of the officers and soldiers who served in the late campaign on the Wabash.

APPROVED, APRIL 10, 1812.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the officers, according to the rank assigned them by Governor Harrison, and which they held on the seventh day of November, one thousand eight hundred and eleven, the non-commissioned officers and soldiers, of the volunteers and militia, and the legal representatives of those who were killed, or died of their wounds, composing the army that served in the late campaign on the Wabash against the hostile Indians, shall receive the same compensation which is allowed by law to the militia of the United States, when called into the actual service of the United States.

SEC. 2. *And be it further enacted,* That the officers, according to the rank which they held as aforesaid, the non-commissioned officers, and soldiers, of the volunteers or militia, who served in the said campaign, and who were killed, or died of wounds received in said service, leaving a widow, or, if no widow, shall have left a child or children, under the age of sixteen, such widow, or if no widow, such child or children, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, or receiving the wound of which he died, for and during the term of five years ; and in case of the death or intermarriage of such widow, before the expiration of the term of five years, the half-pay, for the remainder of the term, shall go to the child or children of such deceased officer or soldier, whilst under the age of sixteen years ; and in like manner the allowance to the child or children of such deceased, where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid : *Provided,* That no greater sum shall be allowed in any case to the widow, or to the child or children, of any officer, than the half-pay of a lieutenant-colonel.

SEC. 3. *And be it further enacted* That every officer, according to the rank which he held as aforesaid, non-commissioned officer, and private, of the volunteers and militia, who served in the said campaign, and who have been disabled by

known wounds received in said service, shall be placed on the list of invalids of the United States, at such rate of pension as shall be directed by the President of the United States, upon satisfactory proof of such wound and disability being produced to the Secretary of War, agreeably to such rule as he may prescribe: *Provided*, That the rate of compensation for such wounds and disabilities shall never, for the highest disability, exceed half the monthly pay of such officer, at the time of being so wounded or disabled, and that the rate of compensation to a non-commissioned officer and private shall never exceed five dollars per month; and all inferior disabilities shall entitle the person so disabled to receive a sum in proportion to the highest disability; but no pension of a commissioned officer shall be calculated at a higher rate than the half-pay of a lieutenant-colonel.

AN ACT in addition to the act entitled "An act to raise an additional military force, and for other purposes."

APPROVED, JANUARY 29, 1813.

SEC. 10. *And be it further enacted*, That if any officer, non-commissioned officer, musician, or private, shall be disabled, by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pension and under such regulations as are or may be directed by law: *Provided, always*, That the compensation to be allowed for such wounds or disabilities, to a commissioned officer, shall not exceed, for the highest rate of disability, half the monthly pay of such officer, at the time of his being disabled or wounded; and that no officer shall receive more than the half-pay of a lieutenant-colonel; and that the rate of compensation to non-commissioned officers, musicians, and privates, shall not exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

AN ACT authorizing the President of the United States to cause certain regiments therein mentioned to be enlisted for five years, or during the war.

APPROVED JANUARY 28, 1814.

SEC. 2. *And be it further enacted*, That each man enlisted under the authority of this act, shall be allowed the same bounty, in money and land, as is now by law allowed to men enlisted for five years or during the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence, and forage, be entitled to the same benefits, be subject to the same

rules and regulations, and be placed in every respect on the same footing, as the other regular troops of the United States.

AN ACT fixing the military peace establishment of the United States.

APPROVED, MARCH 3, 1815.

SEC. 7. *And be it further enacted*, That the several corps authorized by this act shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; and that officers, non-commissioned officers, musicians, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provision for widows and children, and the same benefits and allowances in every respect, not inconsistent with the provisions of this act, as are authorized by the act of sixteenth March, one thousand eight hundred and two, entitled "An act fixing the military peace establishment of the United States," and the act of the twelfth of April, one thousand eight hundred and eight, entitled "An act to raise, for a limited time, an additional military force;" and that the bounty to the recruit, and compensation to the recruiting-officer, shall be the same as are allowed by the aforesaid act of the twelfth of April, one thousand eight hundred and eight.

AN ACT to amend the "Act in addition to the act entitled 'An act to raise an additional military force, and for other purposes.'"

APPROVED, JULY 6, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That five of the regiments which were authorized to be raised by "An act in addition to the act entitled 'An act to raise an additional military force, and for other purposes,'" passed the twenty-ninth day of January, one thousand eight hundred and thirteen, may, at the discretion of the President of the United States, be enlisted for and during the war, unless sooner discharged, and be limited, as to service, to the defence of the seaboard of the United States, or of such part thereof as the President may elect and determine.

SEC. 2. *And be it further enacted*, That each man recruited under the authority of this act, be allowed the same bounty, in money and land, as is allowed by law to men enlisted for five years, or for the war; and that the officers, non-commissioned officers, musicians, and privates, shall receive the same pay, clothing, subsistence, and forage, be entitled to the same benefits, be subject to the same rules and regulations, and be placed, in every respect, on the same footing as the other regular troops of the United States.

## PENSIONS TO SEA-FENCIBLES.

AN ACT to authorize the raising of a corps of Sea-fencibles.

APPROVED JULY 26, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, authorized to raise, for such term as he may think proper, not exceeding one year, as many companies of sea-fencibles as he may deem necessary, not exceeding ten, who may be employed as well on land as on water, for the defence of the ports and harbors of the United States.

SEC. 2. *And be it further enacted,* That each of the said companies of sea-fencibles shall consist of one captain, one first, one second, and one third lieutenant, one boatswain, six gunners, six quarter-gunners, and ninety men.

SEC. 3 *And be it further enacted,* That the commissioned officers shall receive the same pay and rations as officers of the same grade in the army of the United States; that the boatswain, gunners, quarter-gunners, and men, shall receive the same pay and rations as warrant officers of the same grade and able seamen receive in the service of the United States.

SEC. 4. *And be it further enacted,* That the officers, warrant officers, boatswains, and men, raised pursuant to this act, shall be entitled to the like compensation in case of disability incurred by wounds, or otherwise, in the service of the United States, as officers, warrant officers, and seamen, in the present naval establishment, and shall be subject to the rules and articles which have been, or may hereafter be, established by law, for the government of the army of the United States.

SEC. 5. *And be it further enacted,* That this act shall be and continue in force during the present war between the United States of America and their territories, and the United Kingdom of Great Britain and Ireland, and the dependencies thereof.

SEC. 6. *And be it further enacted,* That, in the recess of the Senate, the President of the United States is hereby authorized to appoint all the officers proper to be appointed under this act, which appointments shall be submitted to the Senate at their next session, for their advice and consent.

SEC. 7. *And be it further enacted,* That the sum of two hundred thousand dollars be, and the same is hereby, appropriated to carry this act into effect, to be paid out of any money in the treasury, not otherwise appropriated.

The act of August 2, 1813, entitled an "Act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States ;"

The act of January 28, 1814, entitled an "Act authorizing the President of the United States to cause certain regiments therein mentioned to be enlisted for five years or during the war ;"

The act of February 24, 1814, entitled an "Act to authorize the President to receive into service certain volunteer corps ;"

The act of March 3, 1815, entitled an "Act fixing the military peace establishment of the United States ;" each provide pensions to persons disabled in the service in like manner as the preceding acts.

AN ACT making further provision for military services during the late war, and for other purposes.

APPROVED, APRIL 16, 1816.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* when any officer or private soldier of the militia, including rangers, sea-fencibles, and volunteers, or any non-commissioned officer, musician, or private, enlisted for either of the terms of one year or eighteen months, or any commissioned officer of the regular army, shall have died while in the service of the United States, during the late war, or in returning to his place of residence, after being mustered out of service, or who shall have died at any time thereafter, in consequence of wounds received whilst in the service, and shall have left a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years ; and in case of death or intermarriage of such widow before the expiration of said five years, the half-pay for the remainder of the time shall go to the child or children of said decedent : *Provided, always,* That the Secretary of War shall adopt such forms of evidence in applications under this act as the President of the United States may prescribe : *Provided, also,* That the officers and private soldiers of the militia, as aforesaid, who have been disabled by wounds or otherwise, while in the service of the United States, in discharge of their duty during the late war, shall be placed on the list of pensioners



in the same manner as the officers and soldiers of the regular army, under such forms of evidence as the President of the United States may prescribe: *Provided, also,* That the provisions of this act shall not extend to any person embraced in the provision of the act, entitled "An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States," passed the second day of August, one thousand eight hundred and thirteen.

AN ACT to authorize the President to raise mounted volunteers for the defence of the frontier.

APPROVED JUNE 15, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, authorized to raise, either by the acceptance of volunteers, or enlistment for one year, unless sooner discharged, six hundred mounted rangers, to be armed, equipped, mounted, and organized in such manner, and to be under such regulations and restrictions as the nature of the service may, in his opinion, make necessary.

SEC. 2. *And be it further enacted,* That each of the said companies of rangers shall consist of one captain, one first, one second, and one third lieutenant, five sergeants, five corporals, and one hundred privates, the whole to form a battalion, and be commanded by a major.

SEC. 3. *And be it further enacted,* That the said non-commissioned officers and privates shall arm and equip themselves, unless otherwise ordered by the President, and provide their own horses, and shall be allowed each one dollar per day as a full compensation for their services and the use of their arms and horses. The commissioned officers shall receive the same pay and emolument as officers of the same grade in the army of the United States; and the officers shall be allowed forage for their horses, and be entitled to the same rations as those of the same grade in the army of the United States, respectively.

SEC. 4. *And be it further enacted,* That the officers, non-commissioned officers, and privates, raised pursuant to this act, shall be entitled to the like compensation, in case of disability, by wounds, or otherwise, incurred in the service, as has heretofore been allowed to officers, non-commissioned officers, and privates in the military establishment of the United States, and shall be subjected to the rules and articles of war, and such regulations as have been or shall be established according to law for the government of the army

of the United States, as far as the same may be applicable to the said rangers within the intent and meaning of this act, for the protection and defence of the north-western frontier of the United States.

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AN ACT for the more perfect defence of the frontiers.

APPROVED, MARCH 2, 1833.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* in lieu of the battalion of mounted rangers authorized by the act of the fifteenth of June, one thousand eight hundred and thirty-two, there be established a regiment of dragoons, to be composed and organized, as follows, etc. \* \* \*

SEC. 3. *And be it further enacted, That* the said regiment of dragoons shall be liable to serve on horse or foot, as the President may direct; shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; that the officers, non-commissioned officers, musicians, farriers, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provisions for widows and children, and the same allowances and benefits in every respect, as are allowed the other troops constituting the present military peace establishment.

SEC. 4. *And be it further enacted, That* the President of the United States be authorized to carry into effect this act, as soon as he may deem it expedient, and to discharge the present battalion of mounted rangers, on their being relieved by the said regiment of dragoons.

SEC. 5. *And be it further enacted, That* the sum required to carry into effect the provisions of this act is hereby appropriated, in addition to the appropriations for the military establishment for the year one thousand eight hundred and thirty-three.

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AN ACT to provide for the payment of volunteers and militia corps in the service of the United States.

APPROVED, MARCH 19, 1833.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the officers, non-commissioned officers, musicians, artificers, and privates, of volunteer and militia corps, who have been in the service of the United States, at any time since the first of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service of the United States, shall be entitled to, and receive,

the same monthly pay, rations, clothing, or money in lieu thereof, and forage, and be furnished with the same camp equipage, including knapsacks, as are, or may be, provided by law for the officers, musicians, artificers, and privates, of the infantry of the army of the United States.

SEC. 4. *And be it further enacted*, That the volunteers or militia who have been, or who may be, received into the service of the United States to suppress Indian depredations in Florida, shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

SEC. 5. *And be it further enacted*, That when any officer, non-commissioned officer, artificer, or private of said militia or volunteer corps, who shall die in the service of the United States or returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and shall leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half-pay for the remainder of the time shall go to the child or children of said decedent: *Provided always*, That the Secretary of War shall adopt such forms of evidence, in applications under this act, as the President of the United States may prescribe.

SEC. 6. *And be it further enacted*, That the volunteers and militia, mentioned in the foregoing provisions of this act, called into service before its passage, and who are directed to be paid, shall embrace those only ordered into service by the commanding general, or Governors of States, and of the Territory of Florida, under authority from the War Department for repressing the hostilities of the Florida Indians.

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AN ACT authorizing the President of the United States to accept the service of volunteers, and to raise an additional regiment of dragoons or mounted riflemen.

APPROVED, MAY 23, 1836.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he hereby is, authorized to accept volunteers who may offer their services either as infantry or cavalry, not exceeding ten thousand men, to serve six or twelve months after they shall have ar-

rived at the place of rendezvous, unless sooner discharged; and the said volunteers shall furnish their own clothes, and, if cavalry, their own horses, and when mustered into service shall be armed and equipped at the expense of the United States.

SEC. 2. *And be it further enacted*, That the said volunteers shall be liable to be called upon to do military duty only in cases of Indian hostilities, or to repel invasions, whenever the President shall judge proper; &c., &c., \* \* \* \*

SEC. 5. *And be it further enacted*, That the volunteers who may be received into the service of the United States, by virtue of the provisions of this act, shall be entitled to all the benefits which may be conferred on persons wounded in the service of the United States.

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AN ACT providing for the prosecution of the existing war between the United States and the Republic of Mexico.

APPROVED, MAY 13, 1846.

Whereas, by the act of the Republic of Mexico, a state of war exists between that government and the United States.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, for the purpose of enabling the government of the United States to prosecute said war to a speedy and successful termination, the President be, and he is hereby, authorized to employ the militia, naval, and military forces of the United States, and to call for and accept the services of any number of volunteers, not exceeding fifty thousand, who may offer their services, either as cavalry, artillery, infantry, or riflemen, to serve twelve months after they shall have arrived at the place of rendezvous, or to the end of the war, unless sooner discharged, according to the time for which they shall have been mustered into service; and that the sum of ten millions of dollars, out of any money in the treasury, or to come into the treasury, not otherwise appropriated, be, and the same is hereby, appropriated for the purpose of carrying the provisions of this act into effect. \*

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SEC. 7. *And be it further enacted*, That the volunteers who may be received into the service of the United States by virtue of the provisions of this act, and who shall be wounded or otherwise disabled in the service, shall be entitled to all the benefit which may be conferred on persons wounded in the service of the United States.

AN ACT to extend the provisions of existing pension laws to enlisted men of the ordnance corps of the United States army.

APPROVED, JULY 10, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the acts of Congress granting pensions to soldiers disabled by wounds or otherwise, while in the line of their duty in public service, shall be construed to apply to the enlisted men of the ordnance department who have been or may be disabled in the same manner as to non-commissioned officers, artificers, musicians, and privates of other corps of the army, subject to the limitation that in no such case shall the pension exceed the rate of eight dollars per month.

SEC. 2. *And be it further enacted,* That those enlisted men of the ordnance department who have served or may serve in Mexico, during the war with that country, shall be entitled to, and shall receive, the same bounty in land as is or may be allowed by law to other regular troops in the service of the United States, and under like limitations and restrictions.

## OPINIONS OF ATTORNEYS GENERAL,

AND DECISIONS OF THE SECRETARIES OF WAR AND INTERIOR, RESPECTING  
ARMY INVALID PENSIONS.

As to the character of the disability which entitles.

WASHINGTON, April 6, 1815.

The Secretary of War having, in a letter of the 4th instant, desired my opinion on the true meaning of the first clause of the 14th section of the act of Congress, passed on the 16th of March, 1802, for fixing the military peace establishment, I have the honor to submit the following:

1. The words of the clause are: "That, if any officer, non-commissioned officer, musician, or private, in the corps composing the peace establishment, shall be disabled by wounds or otherwise while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pay, and under such regulations, as may be directed by the President of the United States for the time being."

The question made is, in what other way than by wounds must the disability have been incurred, to entitle the party to the pay provided?

The words of the section are not quite so distinct as to re-

move all grounds for diversity of opinion ; yet, unless some liberality in their interpretation be allowed, it is to be feared that the benignant intentions of the law might be in danger of being curtailed or frustrated. The expression, "or otherwise" is placed in contradistinction to wounds. In its primary signification, it may be taken to import a disability brought on by the direct and apparent agency of accidents or inflictions from the hand of God or men, happening to the party while in the immediate and obvious discharge of his duty, but which could not, with technical propriety, be denominated *wounds*. Instances of this kind may readily be conceived ;—as if an officer, exercising his men on a hot day, should receive a stroke of the sun ; a musician, while obeying an order to sound his bugle, should rupture a blood-vessel ; or a soldier, while working upon fortifications, should dislocate a limb : in such, and similar cases that may be imagined, it cannot be doubted but that the disability would be brought on in a mode to meet the alternative stated in the act. It will be to enlarge it but a little more, and, as is conceived, to uphold its genuine and humane spirit, as well as its legal sense, to say that the connection between the inflicting agent and consequent disability need not always be so direct and instantaneous. It will be enough if it be derivative, and the disability be plainly, though remotely, the incident and result of the military profession. Such are the changes and uncertainties of the military life—such are oftentimes its trials, as well as its hazards—that the seeds of disease, which finally prostrate the constitution, may have been hidden as they were sown, and thus be in danger of not being recognized as first causes of disability in a meritorious claim put forth for the bounty of the act. It would not, I think, be going too far to say, that, in every case where an officer or private loses his health while in the service, to such a degree as to be disabled from performing his duty any more, he is contemplated, *primâ facie*, as an object of this charitable relief from the Legislature.

2. I feel more doubtful in fixing, by any undeviating standard, what is meant by being in the line of his duty. Upon this point, I should presume, however, that every officer in full commission, and not on furlough, must be considered in the line of his duty, although, at the moment, no particular or active employment is devolved upon him. The same of a soldier who is kept in pay ; for it is presupposed of both the one and the other that they are at all times prepared for duty ; and it is surely of indispensable obligation upon them to keep themselves detached from other pursuits,

so as to be ready at a moment to answer any call emanating from those who may be authorized to command them. Perhaps a voluntary absence, too long continued, on the part of an officer from his station, might form an exception, so as to exclude the idea of his being in the line of his duty during any accident or sickness palpably proceeding from causes while he was away. But the officer who, by reason of marches in damp or cold weather, or who, from being in garrison exposed to marshy exhalations, finds, even at some interval, his constitution broken down by rheumatism, or enfeebled by the constant recurrence of fevers, is surely as just an object of this humane stipend at the hands of the Government, as he who may have had his arm shattered by a bullet. Such cases are again put only as examples. Others may also be supposed, in which the performance of military duty, in some of the various shapes it may be made to assume, has proved the original, though it may not be admitted as the proximate, cause of the disability superinduced.

In the discretion which is vested in the President, a sufficient guard is established that an interpretation of the act, such as is indicated by the foregoing remarks, will not open the way to abuse. If the loss of health should have proceeded from careless or irregular habits in the party—much more if from vicious ones; or if he brought to the service or ranks of his country a constitution already impaired, or rankling with the germ of maladies that afterwards do nothing more than ripen into activity;—these will form occasions for caution, or from an entire exclusion from the bounty, when the executive duty comes to be performed in the way Congress has pointed out. A claimant who was suspected not to stand in lights altogether meritorious or innocent, must expect his application would meet a severe scrutiny and certain rejection at the discovery of any thing that could taint it with unfairness or imposition. But if the sound construction be not at least as broad as I have supposed, we shall be at some loss to know what meaning the words “inferior disabilities,” used in the concluding sentence of the 14th section, were intended to convey.

It may, perhaps, be said, that to earn the bounty, the disability should have been incurred by accident or sickness peculiar to the employments of military men, and such as it may reasonably be supposed would have been avoided in other occupations. But it is conceived that this would prove a vague or deceptive rule of interpretation. With what safety, or with what certainty, could it be applied?

The soldier asleep in garrison may suddenly, when he wakes, find his eyesight gone, without being sensible himself, or without its being imagined by others, that the predisposing and leading cause of his affliction was imbibed in ascending the Mississippi months before, whilst a hot and vertical sun was flashing its fires around him. Another may linger in a consumption; the consequence, perhaps, of a slight cold in the beginning, but of which the labors and hardships of his life may never have allowed him opportunity to get rid. And a third may lie bedridden under a palsy, which the change of habits and ailment after his enlistment may have been the chief though occult causes in producing. It would be easy to multiply indefinitely such illustrations, applicable alike to the condition of officers and men.

I would remark, as giving strength to the principles which I suppose the Legislature to have had in mind in framing this section, that we find it recorded in the Digest of Justinian, that "he who has hired his services is to receive his reward for the whole time, if it has not been his fault that the service has not been performed." So, too, by the maritime law, it is well understood, that if sickness or disability overtake a seaman, which was not brought on by vicious or unjustifiable conduct, he is entitled to his full wages for the year. Nor does it make any difference whether it come on during the time he was on actual duty, or was merely accidental while he continued in the service. These principles have been sanctioned by time; and it is hoped that it will not have been deemed out of place to advert to the analogies they hold up.

RICHARD RUSH, *Attorney General*.

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OFFICE OF THE ATTORNEY GENERAL, April 8, 1820.

SIR: I avail myself of the earliest hour at which prior engagements would permit it, to give you my opinion on the question, "whether cadets, who are wounded in the line of their duty, are entitled to pensions?"

1. By the 1st section of the act of the 3d of March, 1815, "fixing the military peace establishment of the United States," *the corps of engineers* was expressly authorized to be retained; and, by the 7th section of the same act, it was provided that the several corps authorized should be entitled to the same provision for wounds and disabilities, &c., as was authorized by the act of the 16th of March, 1802, entitled "An act fixing the military peace establishment of the United States."



By the letter on which your question is endorsed, it appears that the inquiry relates to the cadets at West Point. If these cadets, then, constitute a part of the corps of engineers retained on the peace establishment by the act just cited, they are, by its express enactment, entitled to the same provision for wounds and disabilities, as was authorized by the act of the 16th of March, 1802. Do those cadets constitute a part of that corps?

2. By the 26th section of the act of the 16th of March, 1802, just referred to, a separate and distinct corps of engineers was, for the first time, authorized to be raised; and it was to consist, among others, of ten cadets.

3. By the next section of the same act, it was provided that the corps of engineers, thus organized, should constitute the military academy at West Point. Thus, in its origin, these ten cadets did constitute a part of the corps of engineers. By the 3d section of the act of the 29th of April, 1812, "making provision for the corps of engineers," it was enacted that the cadets theretofore appointed in the service of the United States, as well as those who might in future be appointed, as thereafter directed, might, at the pleasure of the President, be attached to the military academy at West Point, and be subject to the established regulations thereof. By the same section it was provided that, in order to qualify them to be thus attached, they should among other things, have engaged *to serve for five years*, unless sooner discharged; and that they should be entitled to the pay and emoluments allowed by law to cadets in the corps of engineers.

I have had the honor, on a former occasion, to express to you the opinion that the legal effect of this section of the act of 1812 was to consolidate with the original corps of engineers the cadets thus authorized to be added, so that they could no longer be distinguished, in any respect, from that corps; that, like them, they were subject to be called into actual service whensoever and wheresoever it pleased the President to call them; and that, like them, they were at all times subject to the rules and articles of war. Nor have I seen any reason to change this opinion; more especially since I understand it has been approved both by the President and yourself. The cadets, thus composing a part of the corps of engineers, are embraced by every provision affecting that corps in general terms; and, consequently, are embraced by the provision of the 7th section of the act of the 3d of March, 1815, before cited. That section, as we have seen, is. that the several corps *authorized by that*

*act* (of which the corps of engineers was one) should be entitled to the same provision for wounds and disabilities, &c., as was authorized by the act of the 16th of March, 1802. The only remaining question is, whether the act thus referred to authorizes pensions for wounds and disabilities?

It is proper to observe, that the reference thus made to the act of the 16th of March, 1802, is not made for the purpose of ascertaining *who* was entitled to the provision made for wounds and disabilities; for that was already ascertained, as we have seen, by the act of the 3rd of March, 1815, itself. But the reference to the former law is made solely for the purpose of ascertaining what the provision was which was thereby made for wounds and disabilities; and, on turning to the 14th section of the former law, we find it enacted "that if any officer, non-commissioned officer, musician, or private, in the corps composing the peace establishment, shall be disabled by wounds, or otherwise, while in the line of his duty in public service, he shall be placed on the list of invalids of the United States, at such rate of pay," &c.

Thus (contrary, I confess, to my impression, on the first presentation of the question,) I find myself brought to the conclusion that the cadets attached to the military academy at West Point are entitled to the benefits of this provision for wounds and disabilities received in the line of their duty.

WM. WIRT.

To the SECRETARY OF WAR.

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PENSION TO AID-DE-CAMP.—The act of 11th January, 1812, in fixing the rate of allowance for pensions, looks only to commissioned and non-commissioned officers, musicians, and privates; an Aid-de-Camp, therefore, *cannot* receive a pension according to his pay as Aid-de-Camp, but according to the commission he actually held.

OFFICE OF THE ATTORNEY GENERAL, December 5, 1820.

SIR: The 14th section of the act of Congress of the 11th January, 1812, "to raise an additional military force," appears to me to look only to commissioned and non-commissioned officers, musicians, and privates, in fixing the rate of allowance for pensions. There is no rate of pension there given to Aids-de-Camp, who, you inform me, are not commissioned as such, and therefore do not come within either of the denominations given by the act.

The case of Captain White, therefore, is a *casus omissus*, so far as his claim for a pension, graduated by his pay as aid-de-camp, goes. It would be an unwarrantable enlargement of the express terms of the act to extend it to such a case. It would be legislation, not construction; since it would be

a substantive and distinct enactment providing for a new class of cases not contemplated by the act. The spirit of the section can leave no doubt that, if the case had occurred to Congress, they would have provided for it by adapting the pension to the pay of the aid-de-camp. Congress may, and most probably would, by a special law for the particular case, order a pension adjusted by the scale of the pay. But as the law now stands, I do not see that you can, with propriety, do more than to allow a pension regulated by the pay belonging to his commission as captain.

I have the honor to be, sir, very respectfully, your obedient servant,

WM. WIRT.

To the SECRETARY OF WAR.

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Invalid pensions, in all cases, to commence from the time of completing the testimony, according to act 15th May, 1820.

ATTORNEY GENERAL'S OFFICE, *July 19, 1822.*

SIR: On the subject of Colonel Johnson's pension, I cannot see how it can be withdrawn from the sweeping provision of the second section of the act of 15th May, 1820, which directs that all pensions in virtue of any law of the United States shall be considered to commence at the time of completing the testimony. This provision is so direct, and so universal, that the ground on which your doubts are founded is not discerned; and I should be glad to confer with you on the subject before you act on this opinion.

WM. WIRT.

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ATTORNEY GENERAL'S OFFICE, *July 19, 1822.*

SIR: I now understand that the doubt with regard to Colonel Richard M. Johnson's claim of pension relates to the time of its commencement. The second section of the act of 15th May, 1820, declares "that the right any person now has, or may hereafter acquire, to receive a pension in virtue of any law of the United States, be considered to commence at the time of completing his testimony, pursuant to the act hereby revived and continued in force." The affidavits which prove Colonel Johnson's title to a pension were taken before Job Stevenson, a justice of the peace of Scott county, in the State of Kentucky, on the 1st day of August, 1816; but it was not until the 5th of November, 1820, that the certificate of the clerk of Scott county that Job Stevenson was a magistrate, was annexed to those affidavits. The question is—When was this evidence complete; on the 1st of August,

1816, when the affidavits were taken; or on the 5th of November, 1820, when the certificate of the clerk was added?

In the short personal conference which we had on this subject, the predisposition, which, it is almost impossible to avoid feeling in favor of so meritorious a claim, led me to take the earlier date in favor of the claimant; but, on reflection, I must recede from this opinion, and abide by those old and plain rules with which we are all familiar, and from which it is always unsafe to depart. The word *complete* is a strong one; nothing is complete while any thing of form or substance is wanting. Testimony is never complete until it comes in such a shape that its admissability is unquestionable. If it be inadmissible in the form in which it is presented,—if it want any thing of authentication to render it admissible,—it is incomplete; and never is it complete until every objection to its reception is removed.

Would Colonel Johnson's evidence have been received at the department, without the certificate of the clerk that Job Stevenson was a justice of the peace of Scott county? If it would not, it is not complete; and such I understand is the fact, according to the rules of evidence in these cases adopted by the department. I also understand that according to these rules, this certificate of the clerk removed all objection to the testimony; hence, I am constrained to conclude that the testimony was not complete until this certificate was procured—to wit, 5th November, 1820. My regret, however, is diminished by the consideration that there can be no moral doubt that Congress would, on application, carry back the pension to the time of the wounds; which will be better for the petitioner than to assume the earliest date which these laws could, by any possible construction, permit.

WM. WIRT.

To the SECRETARY OF WAR.

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ACT of 2d March, 1821, has not repealed act of 1815.

ATTORNEY GENERAL'S OFFICE, Nov. 17, 1828.

SIR: In answer to your inquiry of the 13th instant, I have the honor to state, as my opinion, that the act of the 2d March, 1821, to reduce and fix the military peace establishment of the United States, has not repealed or changed in any manner the claims for pensions given by the analogous act of 1815 and the acts to which it refers. There is no positive repeal of these provisions in the act of 1821; and a virtual or implicative repeal is only permitted where

there is some repugnance between the last act and the former. None such exists in this case. If, therefore, the words of the 11th section of the act of 1821 were not broad enough to continue the claim to pensions, I should consider them as supported by the antecedent unrepealed laws: being satisfied that Congress had no intention, by the act of 1821, to alter the existing military system, farther than to reduce the establishment, and to make the positive changes which they have made by the act of 1821. I am of the opinion, therefore, that the 11th section of the act of 1821 must be liberally construed, as recognizing all the objects more especially provided for by the 7th section of the act of 1815, and, among these objects, the claim to pensions.

WM. WIRT.

To the SECRETARY OF WAR.

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A pension is suspended, only, for omission to give proof of continuance of disability every two years: He cannot be stricken from the pension roll on that account.

ATTORNEY GENERAL'S OFFICE, *Dec. 9, 1831.*

SIR: An invalid pensioner, who had proved his title to a pension, and been placed on the pension list as such, has omitted, for more than two years, to produce the proof of two surgeons, as required by the act of March 3, 1819.

The question is, can he be lawfully dropped from the pension roll on account of this omission? And must he offer again the proofs of his title to a pension, as if it were an original application, before it can be paid to him?

I think the act of March 3, 1819, does nothing more than suspend the payment until the proof of the surgeons is produced. In order, however, to entitle him to the pension for the whole of the time past, the proof must apply to his condition as an invalid at the expiration of every two years, and show that at those periods his disability continued. But, upon offering such proof from two surgeons, in the manner prescribed by the act of Congress, he is entitled to the payment of his pension, without again producing the evidence which was necessary in the first instance to entitle him to the pension.

But a long omission to apply for payment and offer the proof, unless properly accounted for, may furnish grounds for suspicion, and would certainly justify a more rigorous examination into the claims of the applicant.

To the SECRETARY OF WAR.

R. B. TANEY.

Claims of civil officers to be placed on the pension rolls, and at what *rates* of pension, depend on the "regulations" and "rates" that may be prescribed by the President, according to the act of 16th March, 1802.

ATTORNEY GENERAL'S OFFICE, May 31, 1832.

SIR: General McNeil's application for a pension is made under the act of July 11, 1812.

This law directs that if any officer, non-commissioned officer, &c., shall be disabled while in the line of his duty; "*he shall be placed on the list of invalids of the United States, at such rate of pension and under such regulations as are or may be directed by law;*" and then proceeds to limit the pension which may be allowed to the party. It does not fix the amount to which he shall be entitled, but declares that it shall not exceed certain amounts mentioned in the law.

As this act of Congress gives the party a right to a pension "at such rate and under such regulations as are or may be directed by law," and does not prescribe the manner in which the rate is to be fixed, nor the particular regulation under which he shall be entitled to be placed on the roll of pensions, we must look for some other act of Congress to guide us in this respect. And the only act of Congress then in force, to which this law can be supposed to refer, is the act of March 16, 1802. It is very clear that the act of 1812 cannot be construed to refer to the law of April 25, 1808, which placed invalids who had then been disabled, and who had received their wounds after the revolutionary war, on the same footing with the revolutionary pensioners. And I understand the uniform construction given to the act of 1812 has been, that it referred to the provisions of the act of 1802, to ascertain the rate of pensions, and the regulations by which the party was to become entitled to it. I think this construction is the true one; and as no subsequent law has provided different regulations, or a different mode of fixing the amount of the pension, the provisions of the act of 1802 must, in these particulars, govern in all cases which arise under the act of 1812.

The act of 1802 directs that the party shall be placed on the list of invalids "*at such rate of pay and under such regulations as may be directed by the President of the United States for the time being.*" This law vests in the President the power to prescribe the "regulations" upon which a party may be placed on the pension lists, as well as the rate of pay to be allowed him, provided the amount does not exceed the rates limited by the act of Congress. It is to the regulations and rate of pay thus to be prescribed by the President, that the act of 1812 refers as being then directed by

law; and, consequently, it rests with the President to prescribe the regulations under which a person is to be admitted as a pensioner, and also the rate of pay in all cases which arise under the act of 1812, as well as in those under the act of 1802.

As the President may prescribe the "regulations" under which a party shall be placed on the pension list, no one is legally entitled to be placed there in opposition to any regulation which he may think proper to make on the subject. The order of April 18, 1829, was an exercise of the power thus vested in the President; and since that regulation was made, and while it remains in force, no one who is in the receipt of pay or emolument as an officer of the army can be placed on the pension list.

The case of General McNeil, however, is not embraced in this order. But it does not follow that he has an absolute right to be placed on the pension roll; for it still remains with the President to decide whether he will apply the same regulation to all civil officers, or to any of them, or to what description. He may apply it, if he thinks proper, to civil officers receiving a certain amount of income from their offices, and exempt from its operation those whose allowances are less. And where his regulations do not exclude the party from the roll, he may fix the rate of pay as low as he thinks proper, taking care not to exceed the limits fixed by the act of Congress.

The result of the principles above stated, when applied to the case of General McNeil, is this: He has no absolute legal right to be placed on the pension list. It rests with the President to prescribe the regulations on this subject, which shall be applied to persons holding civil offices. If these regulations shall exclude General McNeil, he cannot be placed on the pension list. If they do not exclude him, or if the President should see fit to make any regulations in relation to persons holding civil offices of profit, then General McNeil will be entitled to be placed on the pension roll. But, in that event, it will still be for the President to determine upon the rate of pay to be allowed to him as a pensioner.

To the SECRETARY OF WAR.

R. B. TANEX.

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Disability incurred from any cause by a person in the line of military duty, if not occasioned by his own misconduct, is entitled to a pension.

OFFICE OF THE ATTORNEY GENERAL, Dec. 20, 1833.

SIR: I have carefully considered the question submitted to me in your letter of the 19th instant, in respect to the

claims of Ebenezer Eaton for a pension under the invalid pension law.

It appears that the claimant was disabled by wounds inflicted on him in May or June, 1813, (at which time he was a sergeant in the army of the United States,) under the following circumstances: he was attempting to pass the guard under the sanction of a written permit granted to him by his commanding officer, when he was assaulted without any provocation, as he alleges, by the officer of the guard in such manner as permanently to disable him.

On this state of facts the question is proposed to me, whether the invalid pension laws, which allow pensions on account of disability occasioned by wounds or other injuries received while the applicant is "*in the line of his duty in the public service*," extend to such a case?

There can be no doubt that the primary object of these laws was to provide for the support of persons disabled in battle, or by injuries received whilst in the performance of some duty of material character; and a strict construction would perhaps exclude all cases of disability arising from assaults committed on the party by persons belonging to the same service. The benevolent character of these provisions, and the motives which led to their enactment, will, however, justify a more liberal construction; and I think, therefore, that a disability occasioned by an assault like that complained of in the present case, may fairly be considered as coming within the terms of the law, provided the War Department shall be satisfied as to the following particulars:

1. That the wounds were given without sufficient justification. For if the assault was brought on the claimant by his own misconduct, he cannot be said to have been disabled "*while in the line of his duty*."

2. That the permit was given to the claimant; and that he was about passing the guard for some purpose growing out of or connected with the public service. For if the pass was given to him merely for the purpose of enabling him to attend to his private affairs, and if, at the time he was injured, he was going about his own private business, he can in no sense be considered as in "*the public service*."

Whether the facts stated in the documents accompanying the application of Mr. Eaton are sufficient to bring his case within the principles above stated, is a matter upon which it is not my province to decide.

B. F. BUTLER.

To the SECRETARY OF WAR.



What constitutes total disability.

DEPARTMENT OF WAR, *October 23, 1828.*

SIR: In answer to your inquiry of this morning, I unhesitatingly give it as my opinion that the words "total disability," as used in the proviso of the act, entitled "An act regulating the payments to invalid pensioners," passed March 3, 1819, were intended as descriptive only of the *nature or character*, and not to the *extent* of those disabilities—the biennial repetition of the proof of which is declared to be unnecessary.

The object of the enacting clause of this law, which contains but one section, is to oblige pensioners to exhibit proof of the state of their respective disabilities at given periods, with a view to graduate the amount of the pension by the extent of the disability for the time being.

The object and spirit of the proviso is to save those pensioners who are placed on the list in consequence of disabilities which are in their nature permanent and unchangeable, the trouble and expense of a useless repetition of proof; and they equally embrace cases (technically speaking) of partial and total disability. The word "total," therefore, as here used in connection with "disability," should not be taken in its technical sense, as indicating that extent of disability which entitles to a full pension; but in its ordinary sense, and conveying the same meaning as if the word perfect, a complete, a permanent, (for each of which it is often used as a substitute,) had been employed. The proviso indeed explains itself by adding to the words "total disability," the following exemplification of its meaning, viz: "in consequence of the loss of a limb, or other causes which cannot, either in whole or in part, be removed."

If a soldier loses an arm or a leg, he presents a case of total disability, which entitles him to a full pension, and he need not repeat his proof, because the record shows that the disability is such as cannot in the nature of things be removed. But if a man lose only two fingers or two toes, it is a case of partial disability, and he receives only a part pension. It would however be equally idle and absurd to require him in this case to prove every two years that his fingers or toes have not grown out again, as it would, in the other, to oblige him to show that his arm or leg has not been restored.

P. B. PORTER.

JAMES L. EDWARDS, Esq., *Pension Officc.*

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When the rolls do not show the disability of an applicant, pension not to be granted without explanation.

WAR DEPARTMENT, *January 10, 1825.*

SIR: The memorial and papers in support of the claim of Laban Brown to a pension, which were referred to this department by the Committee on Pensions, have been examined.

The rule in the investigation of such cases is, not to grant a pension for disability alleged to have been incurred during or since the late war, unless the testimony adduced by the applicant be corroborated by the rolls in this or the Treasury Department, except only in cases where sufficient reasons are given for the want of such corroborated evidence. In this case, there is no return made of the claimant's disability, nor is there any reason assigned for the omission of such return. Under this rule, the claim cannot be allowed. As it is deemed important, it cannot be dispensed with. The documents are herewith returned.

J. C. CALHOUN.

HON. PETER LITTLE, *Ch. Com. Pen. & Rev. Claims, H. R.*

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Officers in receipt of pay in the army, not to be placed on the pension list.

WAR DEPARTMENT, *April 18, 1829.*

The President of the United States directs that, in future, no person while in the receipt of pay or emoluments as an officer of the army, shall be placed on the pension list.

The rule of December 11th, 1822, is rescinded. Hereafter, the evidence in no invalid case, where the laws direct the President to prescribe regulations, shall be considered complete, until it shall have been duly authenticated; and no surgeon's affidavit or certificate shall be deemed evidence of disability sufficient to justify the issue of a pension certificate, unless the same shall have been received at this department within one month from the date thereof.

By order of the President U. States.

J. L. EDWARDS, Esq.

JNO. H. EATON.

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Pension to commence from the date of the examination of the claim in the office.

The evidence in support of pension claims is not deemed to be complete until decided on by the War Department. In future, therefore, the pension in all cases is to commence at the time when the decision is had on the claim, unless there has been a delay in the examination of the department; in which case, the pension is to commence at the time when the documents in support of the claim are received.

Affidavits or certificates in relation to invalid claims, whether original or for increase of pensions, may be received as evidence, if deposited in the department within three months from date thereof.

Under the act of March 2, 1829, the widow or children of a deceased pensioner, as the case may be, must prove that they are such, before a court of record, and get a certificate of the fact from the clerk of the court, under his seal of office, before the arrears can be paid, according to said act.

• Approved, December 22, 1829. J. H. EATON.

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Member of Congress may certify as to the character of a surgeon.

WAR DEPARTMENT, *November 29, 1833.*

The rule of November 17th, 1831, is hereby so amended as to allow the certificate of a member of Congress, as to the character of a surgeon or physician, to be received in a case where the pensioner cannot conveniently obtain the certificate of the agent for paying pensions.

LEWIS CASS.

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Testimony of two witnesses as to disability required, in case where commanding officers are dead.

WAR DEPARTMENT, *June 17, 1834.*

The rule of December 23, 1817, which requires the testimony of a commissioned officer to show the origin and nature of the corporeal disability of an applicant for a pension, may be dispensed with in a case where it is clearly shown that such evidence cannot be obtained, and where other satisfactory proof of disability can be obtained. In such a case, the following rules of evidence will be adhered to.

1. The applicant must make a declaration setting forth all the material facts in the case, and the surgeon must testify as the rule of December 23, 1817, directs.

2. He must prove, by persons of known respectability, that the officers mentioned by the claimant in his deposition are dead, or removed to such a distance as to render it impracticable to obtain their affidavits. The person or persons who may give such evidence must state particularly all the knowledge they may possess in relation to the death or removal of such officers.

3. In such a case as that mentioned in rule No. 2, the applicant must produce the testimony of at least two credible witnesses, whose good character must be vouched for by some one known to this department. The witnesses

must give a minute narrative of all the facts in relation to the matter, and it must be shown conclusively, by their testimony, that the disability of the claimant is to be ascribed solely to injury sustained while the claimant was in the discharge of military duty in the service of the United States. The witnesses must show how they acquired a knowledge of the facts set forth, and state in what capacity or grade they served.

The affidavits must be authenticated in the same manner prescribed by the rule of December 23, 1817.

LEWIS CASS.

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A person discharged as a minor not deprived of his right to a pension.

FEBRUARY 10, 1836.

If a person enlists in the service, and, while there, is disabled, and entitled under existing laws to a pension, and subsequently discharged before the expiration of his term, as a minor, I think he does not lose his claim to a pension.

LEWIS CASS.

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Certificate of United States judge as to the character of a surgeon.

WAR DEPARTMENT, *December 4, 1833.*

The rule of November 17, 1831, is hereby so amended as to allow the certificate of a judge of any of the United States courts, as to the character of a surgeon or physician, to be received in a case where the pensioner cannot conveniently obtain the certificate of the agent for paying pensioners.

J. R. POINSETT.

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Commencement of invalid pensions.

ATTORNEY GENERAL'S OFFICE, *March, 31, 1836.*

SIR: I have had the honor to receive your communication of the 2d instant, submitting for my opinion certain questions presented in a report from the Commissioner of Pensions, in relation to a pension claimed by General Ripley.

It appears, from the document referred to me, that in September, 1829, General Ripley applied to your department for a pension, on account of disability arising from a severe wound which he received while in the service, on the 17th of September, 1814; and that he claimed pay from the time the wound was received. His claim for back pay was not admitted by the Secretary of War, on the ground that the second section of the act of the 15th of May, 1820, applied

to the case, and limited the commencement of the pension to the time when the testimony was completed. In 1831 General Ripley again made application to the department; but a pension was not granted, because the surgeon's affidavit was defective, in not being sufficiently clear in stating the disability, and in not having the necessary authentication. A letter containing the objections was addressed to the claimant on the 9th of March, 1831. In December last, application was again made, and the claim allowed, (there being then no objection to the evidence,) to commence on the 21st of November, 1835. The pension certificate was, however, returned by General Ripley, who again urged his claim for pay from the 17th of September, 1814, on several grounds, stated at length in an argument which is among the papers referred to me, and in which he asks a decision—1st, on the question, whether he is entitled, under the fourteenth section of the act entitled "An act to raise an additional military force," passed January 11, 1812, to a pension from the 17th of September, 1814, the day on which he was wounded; and should the decision be adverse to his claim, he asks, 2d, for pay from the 30th of July, 1830, the date of the surgeon's affidavit, which was filed in 1831.

In relation to these points, the Commissioner supposes four several questions to be involved, to which he wishes the attention of the Attorney General to be directed, and which I shall therefore proceed to answer in their order.

1. "Whether the 2d section of the act of the 15th of May, 1820, entitled 'An act to revive and continue in force an act to provide for persons who were disabled by known wounds received in the revolutionary war, and for other purposes,' has been properly interpreted by this department, in extending it to other than revolutionary cases?"

It appears from the records of this office, that the construction adopted and acted on by your department was officially given by the Attorney General, in his opinion on the case of Colonel Johnson, dated the 2d of July, 1822; and that it has been recognized and followed ever since that date, not only in your department, but by my predecessors in office.

As a general rule, I adopt the decisions of the office on points officially presented, without attempting to review the grounds on which those decisions proceeded; this being the course usually pursued by courts of justice, and being, indeed, indispensable to dispatch of business, and still more so to uniformity of judgment. For the same reason, even where my attention is particularly called to a prior

decision, and especially if it be one which was made by one of my predecessors, and which has been acquiesced in and followed for any length of time, I should yet feel myself bound, in ordinary cases, to adhere to it.

In the present instance, I have felt it my duty, in compliance with the distinct inquiry of the Commissioner of Pensions, to look with some care into the decision referred to. As the result of this examination, I am constrained to say that I have strong doubts as to the accuracy of the construction heretofore given to the act of 1820—so strong, indeed, that if the question were an open one, I should think it the safer and more equitable course to confine the law exclusively to the revolutionary cases.

Although I do not suppose that you will think it expedient, on the doubts now expressed, to reverse the practice which has hitherto obtained in your department; I yet think it due to General Ripley, whose claims may perhaps be urged in another place, to state some of the prominent reasons which induce me to distrust the accuracy and justice of the rule in question.

The second section of the act May 15, 1820, is in the following words:

*"And be it further enacted, That the right any person now has, or hereafter may acquire, to receive a pension in virtue of any law of the United States, shall be construed to commence at the time of completing his testimony, pursuant to the act hereby revived and continued in force."*

The first clause certainly favors the construction which has been given. "In virtue of any law of the United States," is a phrase of very extensive import; and if the section had ended with the word "*testimony*," there would have been nothing to restrain the generality of that phrase, and no doubt could have existed as to its construction.

But the section does not end with *that* word; it uses certain additional words, which form a very material part of the law, and to which it is our duty to give full effect in construing the provision. We have no right to reject them, nor to give them such a construction as to render them absurd or inoperative.

They carry us directly to the act of 1806, named in the title, and revived by the first section.

The testimony is to be completed "*pursuant*" to the act of 1806, named in the title, and revived in the body of the law. By referring to that act, it will be seen that it relates exclusively to persons who received known wounds in the revolutionary war; and that the 2d section prescribes very

minutely the rules and regulations to be observed in substantiating claims intended to be preferred under it. The rules and regulations are, in their character, twofold: they determine the *fact* to be proved, as well as the *mode or means* of proof. The former is "decisive inability, the fact of a known wound or wounds received while in actual service during the revolutionary war;" the mode of proof is to be by affidavits of the commanding officers and surgeons, or others, and the examination, on oath, of the claimant.

Strictly speaking, the testimony cannot be completed *pursuant* to the act of 1806, unless it conform to that act in respect to the *fact* required to be proved, as well as in respect to the *mode* of proof. In revolutionary cases, this would certainly be deemed the effect of the word "*pursuant*." In this sense, it would be impossible for a person disabled during the war of 1812, to complete his testimony pursuant to the act referred to; and if this be the proper construction of the word "*pursuant*," then it will necessarily restrain the generality of the phrase "*any law*," used in the former clause, and compel us to limit the whole section to cases which arose in the revolutionary war. In the brief opinion of my predecessor, these latter words are not made the subject of comment, nor do they appear to have attracted his attention. This is evident from the opinion itself, which is in the following words: "On the subject of Colonel Johnson's pension, I cannot see how it can be withdrawn from the sweeping provision of the second section of the act of May 15th, 1820; which directs that all pensions in virtue of any law of the United States shall be considered to commence at the time of completing the testimony. This provision is so direct and so universal, that the ground on which your doubts are founded is not discovered; and I should be glad to confer with you on the subject, before you act on this opinion."

Upon the construction which was thus given to the law, the word "*pursuant*," when applied to cases arising in the war of 1812, must be deemed to apply only to the *mode* of proof, and not to the *fact* to be proved; thus giving to one and the same word, in the same law, two different interpretations. This is sometimes done by the courts, when the necessity or justice of the case calls for such an accommodation of the language used by the lawgiver.

In the present instance, it seems to me that there is no adequate necessity for this unusual straining of the language; because, by construing the words "*any law*" to

mean any law relative to revolutionary cases, the whole section is rendered consistent with itself.

This construction is also not only strained, but, in my judgment, it makes the law palpably unjust.

The act of January 11th, 1812, declares that "if any officer, etc., *shall be disabled* by wounds or otherwise, while in the line of his duty in public service, he *shall be placed* on the list of invalids of the United States, at such rate of pension, and under such regulations as are, or may be, directed by law," etc. This act does not provide at what time the pension shall commence, except so far as such provision is included in the words "at such rate of pension," and "*under such regulations as are, or may be, directed by law;*" which words refer us (according to the opinion of the Attorney General in the case of General McNeil, dated May 31, 1832,) to the act of the 16th March, 1802—that being the only general law then in force applicable to the subject. The 14th section of the act of 1812 directs that the party disabled shall be placed on the list of invalids "*at such rate of pay, and under such regulations, as may be directed by the President of the United States for the time being.*" The President, therefore, had the power to prescribe, by regulation, the time when pensions for disabilities under the act of 1812 should commence.

I cannot learn that any formal regulation on this point was ever made by the President until the 18th of April, 1829, when the President directed an order to be published, declaring that in future no person, while in the receipt of pay or emoluments as an officer of the army, should be placed on the pension list. The practice of the Pension Office had, however, from an early day, been governed by the same rule; which was expressly prescribed by the old Congress in the resolution of the 26th August, 1776, and in other resolutions of later date. This usage being kept up by the War Department, with the sanction of the President, before and at the enactment of the act of 1812, was, within the meaning of the law, a *regulation* directed by the President, and was, in effect, incorporated in it. All persons entering the army under that act were therefore bound to know that, if disabled, they could not receive pensions as invalids so long as they retained their places in the army, and received the pay and emoluments thereof. But I am distinctly informed by the Commissioner of Pensions, that this was the only limitation imposed by the usage of the office, prior to the act of 15th May, 1820, on the payment of pensions for disabilities under the act of 1812; and that where the party



left the army, at the time he was disabled, the pension was considered as accruing from the date of the disability, no matter when the testimony was completed or produced. This being the case, all persons who entered the army under that law had good reason to expect that, if they should become disabled, they would be allowed pensions according to the nature of their disabilities, to commence from the time when they should cease to receive the pay and emoluments of the service. The contract between them and the government was not precisely to that effect, because it was subject to the contingency that the President might prescribe other regulations which might limit still further the commencement of the pension. But, as this power has not been exercised, the case may be considered as standing precisely on the same ground as though it had not existed.

Under these circumstances, it appears to me, that from the time when General Ripley was disabled by a wound received in the line of his duty, he had a just claim on the good faith of the nation to be placed on the pension list from the time when his pay and emoluments as an officer should cease. And according to the usage of the office, and to the only regulation which has been made by the President, touching the time from which the pension is to commence, if he had made his application at any time before the enactment of the act of the 15th May, 1820, he would have been allowed his pension from the time when his pay ceased, which I understand was in 1821. His right to such a pension was not, indeed, an absolute one; but it was founded on the pledge contained in the act of 1812, and fortified by considerations of the most interesting and impressive character.

The effect of the construction given by my predecessor to the law of 1820 was to take away this right; and, though it may be admitted that Congress had the power to do this, yet I think there can be little difference of opinion as to the harshness and injustice of such an exercise of legislative authority.

In regard to such revolutionary cases as might be presented under the act of 1820, there was no injustice in applying the rule given in the 2d section of that law, because all claims of that sort had been barred by lapse of time, even before the passage of the act of 1806—which act, as well as the act reviving it, had expired; and because that act also contained an express provision that every pension under it should “*commence on the day when the claimant shall have completed his testimony.*” This being the rule by which the pensions gratuitously proffered by the act of 1806 were to be

governed, there could be no objection to repeating the same rule in reference to such cases (though it was probably unnecessary to have done so) in the act of 1820. But such a rule, when applied to cases arising under the act of 1812, which contained nothing to warn parties of the necessity to make immediate applications, and under which a different usage had obtained up to the 15th of May, 1820, was, in my opinion, positively unjust; because it defeated the expectations which persons entering the service under the law of 1812 had a right to cherish; made no discrimination between cases of supine neglect and those of forced delay; allowed nothing for difficulties occasioned by sickness, loss of papers, or other unavoidable accident; and, above all, operated retroactively on the rights of parties.

It is a first principle in the interpretation of statutes, that, where the words are doubtful, such a construction is to be preferred as will be most consistent with the reason and justice of the case. This principle, I think, would have justified my predecessor in construing the 2d section of the act of May 15th, 1820, as not extending to cases arising under the act of 1812; and were I not restrained by the respect due to superior ability and learning, I would say that such a construction was demanded by that principle.

The action of Congress subsequently to the law of 1820 is also calculated to strengthen the doubts above expressed. That act revived the act of 1806 for one year only; but, by the act of February 4th, 1822, the act of 1806 was again revived for six years, and until the then next session of Congress; and by the act of May 24th, 1828, it was once more revived and rendered permanent. Each of these last named reviving acts repeats, *in hæc verba*, the 2d section of the act of May 15th, 1820. The repeated re-enactment of this provision is altogether inconsistent with the idea of its being a general or permanent provision; and shows that, in the judgment of the Legislature, it had expired with the expiration of the acts in which it was contained.

Upon the whole, I entertain, for the reasons above assigned, such strong doubts as to the accuracy of the interpretation heretofore given to the law in question, and so decided an opinion as to the injustice of the law itself, if the construction given to it is the correct one, that I cannot but hope that Congress may even now interfere in these cases, and carry back the pensions to the time when the disabled party ceased to receive the pay and emoluments of the service.

2. "Whether, under the peculiar circumstances in which

the applicant was placed, the law was applicable to his case?"

The circumstances here referred to are the following :

In May, 1820, a large balance stood to the debit of General Ripley, in the accounting offices, for arrears of money received by him for disbursement during the war of 1812. Suits were subsequently brought against him, to recover such balance ; he resisted the recovery, on the ground that he was not indebted to the United States, but on the contrary, that the United States were justly indebted to him ; and, after various proceedings in the controversy, it was finally disposed of by a verdict in favor of the defendant, which closed the account at the Treasury ; and, according to the certificate of the jury, still left General Ripley a creditor of the United States to a large amount. Under these circumstances, he contends that, if the law of 1820 applies to other than revolutionary cases, it ought not to affect him ; because, as he alleges, he was at the time, and ever after, until the closing of his account by the verdict in his favor, disqualified by law from drawing his pension ; and, being so disqualified, the limitation contained in that act did not, and could not, run against him, until it ceased to exist.

The disqualification, on which this argument is founded, did not, so far as I can discern, exist until March 3d, 1823, when a provision was first introduced into the act "making appropriations for the military service of the United States for the year 1823," (which act included an appropriation for invalid pensioners,) prohibiting the payment of any money thereby appropriated to any person for his *compensation* "who is in arrears to the United States, until such person shall have accounted for, and paid into the Treasury, all sums for which he may be liable," etc. This prohibition was for several years incorporated in the general and other appropriation bills ; and in 1828 was enacted as a permanent law, by the act "to prevent defalcations on the part of disbursing agents of the Government, and for other purposes," approved January 25, 1828. This inhibition, in my opinion, extends to the case of an invalid pensioner ; and it must, therefore, be conceded that, from March, 1823, until the balance standing against General Ripley on the books of the Treasury was extinguished, he was disqualified to draw his pension, even had it been previously allowed to him. It is also true, as a general rule, that statutes of limitation do not run against persons disqualified by infancy, interdiction, or any other cause, to enforce their claims ; all such cases being usually excepted from the statutory bar. But it does not appear to me

to the Secretary of War, etc. And the fourth section of the same act of 1806 declares "that every pension, or increase thereof, by virtue of this act, shall commence on the day when the claimant shall have completed his testimony before the authority proper to take the same." Under the act of 1806, it is therefore manifest that the date of the last affidavit, or last oral examination on oath, before the judge or commissioner, was the true date from which the pension was to commence; and as this rule is referred to and adopted by the act of 1820, I do not see how any other formality, not required by the act "thereby revived and continued in force," can be made the test of the completing of the testimony "*pursuant*" to the act. If further evidence be necessary to *authenticate* the proceedings, the President, or the Secretary of War acting under his authority, may undoubtedly require it; and so far the President's regulation of April 18th, 1829, may be regarded as perfectly consistent with the act of 1820. But I am clearly of opinion that the rule referred to in the question I am considering, and the opinion on which it was originally founded, and the regulation by which it is now continued, *so far as they postpone the commencement of the pension to any day later than that on which the testimony was closed before the officer taking it*, is repugnant, not only to the spirit, but to the express words of the act of 1820.

The remaining question proposed by the Commissioner is fully met and disposed of by the conclusion just expressed.

To the SECRETARY OF WAR.

B. F. BUTLER.

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Increase of pension, on account of increased disability, to commence from the date of increased disability.

WAR DEPARTMENT, August 28, 1845.

The practice of the department to commence the increase of an invalid pension on the day when proof is made of an increase of disability is very proper, and is in conformity with the principles laid down in the invalid pension laws; and the reason of the law is, that it is presumed in all cases that the claimant will perfect his proof as soon as his disability is so increased as to render it proper to ask for an augmentation of his stipend. But in a case where it is very obvious that the pensioner has suffered an amputation of a limb from a wound received in battle, and has, by reason of his helpless condition, arising from the loss of his limb, delayed his application, it is only just, and entirely consistent with the humane policy of the laws and a liberal construction of the same, that he should receive the pension, at the increased rate, from the time when the amputation took

place. Let this be the rule, therefore, in future, in every case where a pensioner has, after being pensioned, suffered the loss of a limb on account of a wound while in the line of his duty as a soldier, receive the benefit of his increased pension from the time when the amputation was made.

W. L. MARCY.

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A soldier is always in the line of his duty, except under arrest, in confinement, on furlough, or absent without leave.

DEPARTMENT OF THE INTERIOR, *April 10, 1849.*

SIR: Your letter of the 30th ultimo, to the Secretary of War, in relation to the construction to be placed upon the joint resolution relative to evidence in applications for pensions of the 3d ultimo, has been referred to this department; and, in reply to your inquiry, have to state that it is my opinion, as a general rule, that the soldier is to be regarded as being always in the "line of his duty," when he is not under arrest, in confinement, on furlough, or absent without leave, although there may be peculiar circumstances in particular cases which should modify this construction.

T. EWING, *Secretary.*

Dr. H. L. HEISKILL, *Acting Surgeon General.*

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Death of a soldier arising from intemperance, which is a violation of military law, is not a case of death occurring in the line of his duty.

DEPARTMENT OF THE INTERIOR, *October 10, 1850.*

SIR: From an examination of the papers in the case of Mary Hart, widow of Patrick, *alias* John Hart, who asserts a claim under the act of July 21st, 1848, it appears an appeal was taken from the decision of the Commissioner of Pensions, who maintained that the act of 21st February, 1848, did not provide for the case, as Hart did not die from disease contracted in the line of his duty.

The Acting Secretary of the Interior on the 31st ult., overruled the action of the Pension Office, on the ground that Hart enlisted on the 15th February, 1847—joined the army in Mexico; that the return of the Adjutant General showed "John Hart, a private of company B, 4th artillery, died at Camp Ringgold, Texas, December 4th, 1848, of apoplexy;" and that the act of the 22d of February, 1849, expressly provides for the widows of those who remained "in service" to the date of their "death."

The Commissioner of Pensions objected to the issue of the pension certificate, because Assistant Surgeon O. L. Campbell, in an official communication to the Surgeon General,

stated that Hart's death was caused by intemperance, and that he was an "habitual drunkard."

This paper, however, was not before the Acting Secretary at the time of his decision, as the certificate of Assistant Surgeon Coolidge verifying that of Surgeon Campbell bears date the 19th September, 1850, which was *six days* after the date of the letter of the Acting Secretary of the Interior overruling the decision of the Commissioner of Pensions.

I am, therefore, of the opinion, that although apoplexy may be induced by other causes than that of intemperance, yet it is clearly shown that Hart was an habitual drunkard, and that his death was caused thereby, and as drunkenness is an offence against the military laws, he did not die from a disease contracted in the service and in the line of his duty. The claim is therefore rejected.

F. W. RISQUE, *Washington.*

A. H. H. STUART.

#### APPLICATION FOR AN INVALID PENSION.

In cases where the regular discharge and surgeon's certificate for disability have been lost, or where none have been given, the applicant must produce the certificate of his captain, or other commissioned officer under whom he served, stating distinctly the time and place of his having been wounded, or otherwise disabled, and that the said wounds or disabilities arose while in the service of the United States, and in the line of his duty.

If it be impracticable to obtain such certificate, by reason of death or removal of said officers, it must be so stated in the declaration of the applicant, and his averment of the fact proven by persons of known respectability, who must state particularly all knowledge they may possess in relation to such death or removal.

The certificate of a commissioned officer cannot be dispensed with, unless it be shown, as above stated, that such certificate cannot be obtained. Then, secondary evidence can be received. In such case the applicant must produce the testimony of at least two credible witnesses, (who were in a condition to know the facts about which they testify,) whose good character must be vouched for by some one known to the Department, and who must give a minute narrative of all the facts in relation to the matter. They must show how they obtained a knowledge of the facts to which they testify, and state in what capacity or grade they served.

The surgeons must give, in their certificate, a particular

description of the wound, injury, or disease, and specify how, and in what manner, his present condition and disability are connected therewith. The degree of disability must also be stated.

The habits of the applicant, and his occupation, since he left the service, must be shown by at least two credible witnesses.

All evidence must be verified by oath before a judge of the United States Court, or some judge or justice of the peace, or other officer of a State, having authority to administer oaths for general purposes; and, if verified before an officer of any State, his official character must be duly authenticated: and such officer must, in all cases, certify that he is not interested in the prosecution of the claim.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... in the year A.D. one thousand eight hundred and....., personally appeared before me, a Justice of the Peace, within and for the county and State aforesaid, duly authorized by law to administer oaths,..... aged..... years, to me known to be a resident of..... in the State of.....; who, being duly sworn, according to law, declares that he is the identical..... who enlisted in the service of the United States as a..... in the company..... commanded by Captain..... in the regiment commanded by Colonel..... in service during the War with..... That he enlisted on or about the..... day of..... A.D. 18..; and was honorably discharged on the..... day of..... in the year eighteen hundred and.....

That while in the service, and in the line of his duty, he became disabled in the manner, at the time and place, as follows, viz.: .....

That since the discharge of deponent as above, he has resided as follows: .....

That his certificate of discharge has been..... That his occupation since his discharge has been as follows: .....

*(In case the testimony of an officer cannot be had, use the following:)*

And deponent further states, that from the best of his knowledge, information and belief, the commissioned officers of the company in which he served, are either dead, removed so that their residences are unknown, or reside as follows, viz.: .....

Captain.....

Lieutenant.....

Lieutenant.....

And further, that in consequence of the foregoing, he is unable to obtain more full and correct evidence in support of his application than that herewith presented.

That he makes this declaration for the purpose of obtaining the benefit of the Invalid Pension laws of the United States.

Sworn to and Subscribed before me, on the day and in the year first above mentioned, and I further certify that I am not interested as agent, attorney, or otherwise. .... J. P. }

STATE OF..... }  
COUNTY OF..... } ss.

Before me, the undersigned, a Justice of the Peace, in and for said County, personally appeared..... and..... residents of..... in the State of....., whom I certify to be respectable, and entitled to credit, and who, being by me duly sworn, say, that they were present and saw..... make the foregoing declaration by signing his name thereto, and making oath to the same; and they further swear, that they have every reason to believe, from the appearance of the applicant and their acquaintance with him, that he is the identical person he represents himself to be, and that they (deponents) do reside in....., in the State aforesaid.

SWORN TO AND SUBSCRIBED before me, {  
this..... day of..... A.D. 18.. }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... A.D. 18.., personally appeared before me, the subscriber, a Justice of the Peace, in and for the County and State aforesaid, duly authorized to administer oaths,....., aged..... years, to me well known as a resident of....., in the State of....., and to be a credible witness, and who, being by me first duly sworn, deposes and says:— That he is the identical....., who was a (*captain*) in a company of....., commanded by....., in the war with.....; that he was with his company mustered into the service of the United States on or about the..... day of....., A.D. 18.., and was, with said company, duly mustered out of service on or about the..... day of....., A.D. 18.. That he is well acquainted with....., whose declaration for a pension is hereto annexed, and knows him to be the identical person named in said declaration. That the said..... was mustered into the service on or about the..... day of....., A.D. 18.., and was honorably discharged on the..... day of....., A.D. 18.., in consequence of..... That the said..... became disabled from doing duty as a soldier on the..... day of....., A.D. 18.., while he was actually in the service of the United States and in the line of his duty, in the manner and at the place, as follows:

That the said disability affected him while in the service, after it was received, and until his discharge, as follows: .....

SUBSCRIBED AND SWORN to before me, {  
this..... day of....., A.D. 18.. }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., A.D. 18.., personally appeared before me, the subscriber, a Justice of the Peace in and for said county,....., aged..... years, a resident of..... in said county, and....., aged..... years, a resident of..... in said county, both of whom I know to be credible witnesses; who, being first duly sworn according to law, on their oaths state: that they are well acquainted with..... who has made the foregoing declaration for an invalid pension, and know him to be the identical..... who was a..... in the company commanded by Captain..... in the regiment of....., commanded by Col....., in the war with.....; that he entered the service on the..... day of....., A.D. 18.., and was honorably discharged on the..... day of....., A.D. 18.. That while in the service of the United States and in the line of his duty, the said..... became disabled, at the time, in the manner, and at the place, following, viz: .....

That in consequence of the disability above described, the said..... was at the time of his discharge, and still is, disabled from performing the duties of a soldier. That they have known him since the date of his discharge, and tes-



tify that the disability above described has affected him since his discharge up to this present time, in the manner following :

And deponents further state, that the said ..... is, by occupation, a ..... , and that his habits of life are now, and have been since his discharge as aforesaid, uniformly good.

And deponents further state, that the commissioned officers belonging to the said company were named as follows, viz. : Captain ..... , Lt. .... , Lt. .... , (each of whom have died or removed, so that their testimony cannot be obtained. That deponents so assert, from information derived as follows : ..... )

And the said ..... , first named in the affidavit, states that he obtained knowledge of the disability of the said ..... from having been in the military service of the United States and serving as a ..... in the company commanded by Captain ..... .

And the said ..... states that his information is derived from having also been engaged in the service as a ..... in the company commanded by ..... .

And deponents further state that their service as aforesaid, was at the same time as that performed by the said ..... , and that they are disinterested.

SWORN AND SUBSCRIBED before me, this ... day of }  
....., A D. 18... , and I certify that I am not in- }  
terested as agent or otherwise. }  
..... J. P.

STATE OF ..... }  
COUNTY OF ..... } ss.

It is hereby certified that ..... late a ..... in Captain ..... company of ..... in the service of the United States, is rendered incapable of performing the duty of a soldier, by reason of wounds or other injuries inflicted while he was actually in the service aforesaid, and in the line of his duty, viz. :

By satisfactory evidence and accurate examination, it appears that on the ..... day of ..... , in the year one thousand eight hundred and ..... at a place called ..... , in ..... , he was disabled in the manner following, viz. : .....

That in consequence he is now disabled, and the following is an accurate description of the wound, injury, or disease, and the manner which it now affects him, and in what manner his present condition and disability are connected therewith, viz. : .....

They further state that they believe his habits of life to be good.

That he is, in consequence of said ..... , not only incapacitated for military duty, but in the opinion of the undersigned is ..... disabled from obtaining his subsistence from manual labor. Dated the ..... day of ..... , A.D. 18... M.D.  
..... M.D.

I certify that the foregoing certificate was subscribed by ..... and ..... on the ..... day of ..... A.D. 18... before me, the undersigned, a Justice of the Peace in and for said county ; and each being duly sworn, says that the contents of the same are true ; and I further certify that the said ..... and ..... are physicians well known to me, and that they are reputable in their profession. Dated this ..... day of ..... , A.D. 18... ..... J. P.

Know all men by these presents, that I, ..... do hereby constitute and appoint ..... my true and lawful attorney, authorizing him hereby to prosecute this my claim to a pension, and to receive the certificate to be issued thereon. Dated this ..... day of ..... , A.D. 18...

WITNESS : .....

..... [SEAL]

STATE OF..... }  
COUNTY OF..... } ss.

I, ..... clerk of the Court of ....., do hereby certify, that ....., Esq., before whom the foregoing affidavits were made, was at the time of so doing a Justice of the Peace in and for said county, duly commissioned and sworn, and that his signatures are genuine. And further, that I am not interested in said claim as attorney or otherwise.

Witness my hand and the seal of said Court, this  
..... day of ....., A. D. 18...

..... Clerk.

## INVALID PENSIONS—CHEROKEE WARRIORS.

AN ACT to provide for the allowance of invalid pensions to certain Cherokee warriors, under the provisions of the fourteenth article of the treaty of eighteen hundred and thirty-five.

APPROVED, APRIL 14, 1842.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he hereby is, required to place on the pension roll such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the Southern Indians, and who were wounded in such service, at the same rates of pension as are allowed by law to the officers and soldiers of the regular army of the United States, under such rules and regulations as to the proof of disability as the Secretary of War shall prescribe; which pensions shall commence from the period of disability.*

REGULATIONS.—In substantiating claims under this law, the following evidence will be required:—

The applicant must make a declaration, under oath, before some officer of the United States, or of the Cherokee nation, duly qualified to administer oaths, stating how, when, and where he was wounded, and where he at present resides. He must also produce the testimony of at least two persons of known respectability, stating their knowledge of the claimant, giving his name, residence and age, according to the best of their knowledge and belief; the reputation he has borne in the neighborhood where he resides; and they must be particular in stating the fact whether, during the whole time they have been acquainted with him, he has been considered as one of the Cherokee warriors who was wounded while in the United States' service during the late war with Great Britain. The affidavits must be duly authenticated.

The applicant, on obtaining such proof, must present himself to some officer of the medical staff of the army, who will carefully examine him, and give such a certificate respecting his disability as the facts will justify him in giving. The applicant's wound must be particularly described, and the degree of disability arising from the wound must be clearly stated. The examining surgeon is also required to be particular in stating any fact within his knowledge that may have the tendency to throw light on the claim, whether or not it may relate to the claimant's disability. The an-

nexed form, prescribed for granting certificates to persons disabled while in the line of their duty in the United States' service, must be followed by the examining surgeons.

No claim will be allowed unless the claimant's name appear on the muster rolls.

The pensions which may be granted will be paid only to the pensioner in person, by or under the direction of some officer of the United States, upon satisfactory evidence of the identity of the applicant. In no case will the powers of attorney be recognized.

Surgeon's certificate in the case of a Cherokee invalid.

Having been requested by....., one of the Cherokee tribe, who is now an inhabitant of....., to examine him with a view of giving him such a certificate as may aid him in procuring a pension from the United States, under the act of the 14th of April, 1842, I hereby certify that I am fully satisfied, from the affidavits of..... and....., two persons in whose statements I repose entire confidence, that the aforesaid....., an applicant for a pension, did actually serve in the regiment of the Cherokee Indians who were engaged on the side of the United States during the late war with Great Britain; that he was under the command of Captain....., and that while in said service, and engaged in battle at or near....., he was wounded by a [*here particularly describe the wound, and say in what way he is affected by it,*] and that in consequence of the injury received by said wound he is [*here state the degree of disability—whether one-fourth, one third, one-half, three-fourths, or total—as the case may be,*] disabled from obtaining his subsistence by manual labor.

....., Surgeon U. S. army.

Dated at....., this..... day of....., 18....



## **PENSIONS FOR WIDOWS AND ORPHANS.**

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### **ARMY, VOLUNTEERS AND MILITIA.**

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The following laws are executed by the Third Auditor of the Treasury. No regulations have ever been issued, nor has there been any form of application prescribed. Claimants should make a declaration, under oath, setting forth all the facts of the case, which should be supported by the best evidence obtainable. The papers forming the claim, should be presented to the "Third Auditor of the Treasury," by whom the examination and settlement is made. Payment of these pensions is made by the accounting officers of the Treasury.

## PENSIONS FOR WIDOWS AND ORPHANS.

AN ACT in addition to the "Act for making further and more effectual provisions for the protection of the frontiers of the United States."

APPROVED, JUNE 7, 1794.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That if any commissioned officer of the troops of the United States shall, while in the service of the United States, die, by reason of wounds received in actual service of the United States, and shall leave a widow, or if no widow, shall leave a child or children, under age, (16 years) such widow, or if no widow, such child or children, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years: and, in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half-pay, for the remainder of the term, shall go to the child or children of such deceased officer, while under the age of sixteen years; and, in like manner, the allowance to the child or children of such deceased, where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid. *Provided,* That no greater sum shall be allowed, in any case, to the widow, or to the child or children, of any officer, than the full pay of a lieutenant-colonel.

AN ACT to provide for the widows and orphans of certain deceased officers.

APPROVED, MARCH 14, 1798.

SEC. 1. *Be it enacted, &c.,* That the provisions for widows and orphans of commissioned officers of troops of the United States, contained in the first section of the law passed on the seventh day of June, one thousand seven hundred and ninety-four, entitled "An act in addition to the act making further and more effectual provision for the protection of the frontiers of the United States," be, and the same are hereby, extended to the widows and orphan children of the commissioned officers of the troops of the United States, and of the militia, who have died by reason of wounds received since the fourth day of March, one thousand seven hundred and eighty-nine, in the actual service of the United States: *Provided,* applications shall be made within two years after the end of the present session of Congress.

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AN ACT fixing the military peace establishment of the United States.

APPROVED, MARCH 16, 1802.

SEC. 15. *And be it further enacted*, That if any commissioned officer in the military peace establishment of the United States, shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years. But in the case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half-pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided, always*, That such half-pay shall cease on the decease of such child or children.

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AN ACT to raise for a limited time an additional military force.

APPROVED, APRIL 12, 1808.

*Part of* SEC. 5. And that the provisions of the act, entitled "An act fixing the military peace establishment of the United States," (act of March 16, 1802, above,) relative to the widow, child, or children, of any commissioned officer who shall die, while in the service of the United States, by reason of any wound received in actual service of the United States, shall be in force, and applied to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same.

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AN ACT authorizing the President of the United States to raise certain companies of rangers, for the protection of the frontier of the United States.

APPROVED, JANUARY 2, 1812.

SEC. 4. *And be it further enacted*, That the officers, non-commissioned officers, and privates, raised pursuant to this act, shall be entitled to the like compensation in case of disability, by wounds and otherwise, incurred in the service, as officers, non-commissioned officers, and privates, in the present military establishment, and with them shall be subject to the rules and articles of war, which have been established, or may hereafter by law be established; and the provisions of the act, entitled "An act fixing the military peace estab-



lishment of the United States," so far as they may be applicable, shall be extended to all persons, matters, and things, within the intent and meaning of this act, in the same manner as if they were inserted at large in the same. This act shall take effect, and be in force, from and after the passage thereof, and continue in force for one year, and from thence to the end of the next session of Congress.

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AN ACT to raise an additional military force, and for other purposes.

APPROVED, JANUARY 11, 1812.

SEC. 15. *And be it further enacted*, That if any commissioned officer in the military establishment of the United States shall, while in the service of the United States, die by reason of any wound received in the actual service of the United States, and leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years. But in case of the death or intermarriage of such widow before the expiration of the said term of five years, the half-pay for the remainder of the time shall go to the child or children of such deceased officer: *Provided always*, That such half-pay shall cease on the decease of such child or children.

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AN ACT for the relief of the officers and soldiers who served in the late campaign on the Wabash.

APPROVED, APRIL 10, 1812.

SEC. 2. *And be it further enacted*, That the officers, according to the rank which they held as aforesaid, the non-commissioned officers, and soldiers, of the volunteers or militia, who served in the said campaign, and who were killed, or died of wounds received in said service, leaving a widow, or if no widow, shall have left a child or children, under the age of sixteen, such widow, or if no widow, such child or children, shall be entitled to, and receive, the half of the monthly pay to which the deceased was entitled at the time of his death, or receiving the wound of which he died, for and during the term of five years; and in case of the death or intermarriage of such widow, before the expiration of the term of five years, the half-pay, for the remainder of the term, shall go to the child or children of such deceased officer or soldier, whilst under the age of sixteen years; and in like manner the allowance to the child or children of such deceased,

where there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid: *Provided*, That no greater sum shall be allowed in any case to the widow, or to the child or children, of any officer, than the half-pay of a lieutenant-colonel.

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AN ACT in addition to the act entitled "An act to raise an additional military force, and for other purposes," passed January 11, 1812.

APPROVED, JANUARY 29, 1813.

SEC. 11. *And be it further enacted*, That if any commissioned officer shall, while in the service of the United States, die, by reason of any wound received in actual service of the United States, and leave a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to and receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; but, in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half-pay for the remainder of the time shall go to the child or children of such deceased officer: *Provided, always*, That such half-pay shall cease on the decease of such child or children.

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AN ACT to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States.

APPROVED, AUGUST 2, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That if any commissioned officer of the militia, or of any volunteer corps, shall, while in the service of the United States, die by reason of any wound received in actual service of the United States, and leave a widow, or if no widow, a child or children, under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; but in case of intermarriage of such widow, before the expiration of the said term of five years, the half-pay, for the remainder of the time, shall go to the child or children of such deceased officer: *Provided, always*, That such half-pay, shall cease on the death of such child or children.

SEC. 3. *And be it further enacted*, That the provisions of this act shall be construed to have effect from and after the eighteenth day of June, one thousand eight hundred and twelve.

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AN ACT fixing the military peace establishment of the United States.

APPROVED, MARCH 3, 1815.

SEC. 7. *And be it further enacted*, That the several corps, authorized by this act shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; and that officers, non-commissioned officers, musicians, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provisions for widows and children, and the same benefits and allowances in every respect, not inconsistent with the provisions of this act, as are authorized by the act of March sixteenth, one thousand eight hundred and two, entitled "An act fixing the military peace establishment of the United States," (act of March 16th, 1802,) and the act of April twelfth, one thousand eight hundred and eight, entitled "An act to raise, for a limited time, an additional military force;" (act of April 11th, 1808) and that the bounty to the recruit, and compensation to the recruiting officer, shall be the same as are allowed by the aforesaid act of April twelfth, one thousand eight hundred and eight.

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AN ACT making further provision for military services during the late war, and for other purposes.

APPROVED, APRIL 16, 1816.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when any officer or private soldier of the militia, including rangers, sea-fencibles, and volunteers, or any non-commissioned officer, musician, or private, enlisted for either of the terms of one year or eighteen months, or any commissioned officer of the regular army, shall have died while in the service of the United States, during the late war, or in returning to his place of residence, after being mustered out of service, or who shall have died at any time thereafter, in consequence of wounds received whilst in the service, and shall have left a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of death or intermarriage of such widow before the expiration of said five years, the half-pay for the remainder of the time shall go to the child or children of said decedent; *Provided, always*, That the Secretary of War shall adopt such forms of evidence in applications under this act as the President of the United States may prescribe: \* \* \*

*Provided, also, That the provisions of this act shall not extend to any person embraced in the provision of the act, entitled "An act to provide for the widows and orphans of militia slain, and for militia disabled, in the service of the United States," passed the second day of August, one thousand eight hundred and thirteen.*

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AN ACT to amend an act, entitled "An act making further provision for military services during the late war, and other purposes."

APPROVED, MARCH 3, 1817.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the widows and children of soldiers of the militia, the volunteers, the rangers, and the sea-fencibles, who served during the last war, and for whom half-pay for five years was provided, by an act passed on the sixteenth day of April, one thousand eight hundred and sixteen, entitled "An act making further provision for military services during the late war, and for other purposes," shall be placed on an equality as to their annual allowance, that is to say: Such widows, and in case of no widow, such children, as may be embraced in the before recited act, shall be entitled to receive (as the half-pay to which they are entitled), at the rate of forty-eight dollars per annum, and no more; and the widows and children aforesaid, of the officers of the different corps aforesaid, shall be entitled to the half-pay of the officers of the infantry.*

SEC. 4. *And be it further enacted, That the widows and children of the non-commissioned officers of the rangers shall be placed on the same footing as to half-pay, for five years, with the widows and children of the infantry.*

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AN ACT to increase the pay of the militia while in actual service, and for other purposes.

APPROVED, APRIL 20, 1818.

SEC. 2. *Be it further enacted, That the widows and orphans of the militia who have been called into the service of the United States since the first day of September, eighteen hundred and seventeen, or who hereafter may be called into the said service, in prosecuting said war, and who may have died or been killed, or hereafter may die or be killed, in such service, shall be entitled to the same half-pay, for five years, and pensions allowed by the laws now in force to the widows and orphans, of the militia who died or were killed in the service of the United States during the late war with Great Britain.*

AN ACT for the more perfect defence of the frontiers.

APPROVED, MARCH 2, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That, in lieu of the battalion of mounted rangers authorized by the act of June fifteenth, one thousand eight hundred and thirty-two, there be established a regiment of dragoons, to be composed and organized as follows, etc.

SEC. 3. *And be it further enacted*, That the said regiment of dragoons shall be liable to serve on horse or foot, as the President may direct; shall be subject to the rules and articles of war, be recruited in the same manner, and with the same limitations; that the officers, non-commissioned officers, musicians, farriers, and privates, shall be entitled to the same provisions for wounds and disabilities, the same provisions for widows and children, and the same allowances and benefits in every respect, as are allowed the other troops constituting the present military peace establishment.

AN ACT to provide for the payment of volunteers and militia corps in the service of the United States.

APPROVED, MARCH 19, 1830.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, musicians, artificers, and privates, of volunteer and militia corps, who have been in the service of the United States, at any time since the first of November, in the year of our Lord one thousand eight hundred and thirty-five, or may hereafter be in the service, of the United States shall be entitled to, and receive, the same monthly pay, rations, clothing or money in lieu thereof, and forage, and be furnished with the same camp equipage, including knapsacks, as are, or may be, provided by law for the officers, musicians, artificers, and privates, of the infantry of the army of the United States.

SEC. 5. *And be it further enacted*, That when any officer, non-commissioned officer, artificer, or private of said militia or volunteer corps, who shall die in the service of the United States or returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and shall leave a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, for and during the term of five years; and in case of the death or intermarriage of such

widow before the expiration of five years, the half-pay for the remainder of the time shall go to the child or children of said decedent; *Provided, always,* That the Secretary of War shall adopt such forms of evidence, in applications under this act, as the President of the United States may prescribe.

SEC. 6. *And be it further enacted,* That the volunteers and militia, mentioned in the foregoing provisions of this act, called into service before its passage, and who are directed to be paid, shall embrace those only ordered into service by the commanding generals or governors of States, and of the Territory of Florida, under authority from the War Department, for repressing the hostilities of the Florida Indians.

# PENSIONS FOR WIDOWS AND ORPHANS.

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## ARMY, VOLUNTEERS AND MILITIA.

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Claims for Pensions under the following acts of Congress, are examined and adjusted at the office of the Commissioner of Pensions :

AN ACT granting half-pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes.

APPROVED, JULY 4, 1836.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* when any officer, non-commissioned officer, musician, or private, of the militia, including rangers, sea-fencibles, and volunteers, shall have died while in the service of the United States, since the twentieth day of April, eighteen hundred and eighteen, or who shall have died in consequence of a wound received whilst in the service, since the day aforesaid, and shall have left a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death or receiving such wound, for and during the term of five years; and, in case of the death or marriage of such widow before the expiration of said five years, the half-pay for the remainder of the time shall go to the said decedents: *Provided*, That the half-pay aforesaid shall be half the monthly pay of the officers, non-commissioned officers, musicians, and privates of the infantry of the regular army, and no more: *Provided, also*, That no greater sum shall be allowed to the widow or to the child or children of any officer, than the half-pay of a lieutenant-colonel. \* \* \*

SEC. 4. *And be it further enacted*, That any pledge, mortgage, sale, assignment, or transfer of any right, claim, or

interest, in any money or half-pay granted by this act, shall be utterly void and of no effect; each person acting for and in behalf of any one entitled to money under this act, shall take and subscribe, on oath, to be administered by the proper accounting officer, and returned by him and put on file, before a warrant shall be delivered to him, that he has no interest in said money by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person, whatever.

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AN ACT amending the act entitled "An act granting half-pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States," in case of deceased officers and soldiers of the militia and volunteers, passed July 4th, eighteen hundred and thirty-six.

APPROVED, JULY 21, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the first section of the act entitled "An act granting half-pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States, in certain cases, and for other purposes," approved July 4th, eighteen hundred and thirty-six, shall be applicable to all widows and orphans of officers, non-commissioned officers, musicians, and soldiers, of the army of the United States, who were in the army of the United States on the first day of March, eighteen hundred and forty-six, or at any subsequent period during the present war between the United States and Mexico.

SEC. 2. *And be it further enacted,* That all widows and orphans of officers, non-commissioned officers, musicians, and privates, whether of the regular army or of volunteers, who have died since the first day of April, one thousand eight hundred and forty-six, or who may die during the war with Mexico, from wounds received or from disease contracted while in the line of duty, shall be entitled to the same rate of pension as is provided for in the first section of the before-mentioned act, under like limitations and restrictions: *Provided,* said death has occurred, or may hereafter occur, while said officers, non-commissioned officers, musicians, or privates, were in the service of the United States, and in the line of duty; or while returning to their usual place of residence in the United States, after having received a discharge upon a surgeon's certificate for disability incurred from wounds received, or disease contracted, while in the line of duty, or while on their march to join the army in Mexico:



*And provided further*, That this act shall not be applicable to the widows and orphans of such officers, non-commissioned officers, musicians, or privates, who have not served in Mexico, or at posts or stations on the borders of Mexico, except where such officers, non-commissioned officers, musicians, or privates, have died while on their march to join the army in Mexico.

SEC. 3. *And be it further enacted*, That all pensions under this act shall be granted under such rules, regulations, restrictions, and limitations as the Secretary of War, with the approbation of the United States, may prescribe.

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AN ACT granting five years' half-pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regular and volunteers.

APPROVED, FEBRUARY 22, 1849.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the second section of the act entitled "An act amending the act entitled 'An act granting half-pay to widows or orphans, where their husbands and fathers have died of wounds received in the military service of the United States,' in cases of deceased officers and soldiers of the militia and volunteers," approved July twenty-first, eighteen hundred and forty-eight, shall be so construed as to embrace all widows and orphans of officers, non-commissioned officers, musicians, and privates, whether of the regular army or of volunteers, who have received an honorable discharge, or who remained to the date of their death in the military service of the United States, and who have died, since their return to their usual place of residence, of wounds received, or from disease contracted while in the line of duty, subject to such rules, regulations, and restrictions, as the Secretary of War, by the third section of said act, is authorized to impose.

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JOINT RESOLUTION, explanatory of certain acts, therein mentioned.

APPROVED, SEPTEMBER 28, 1850.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the provisions of the second section of the act entitled "An act amending the act entitled 'An act granting half-pay to widows and orphans, where their husbands and fathers have died of wounds received in the military service of the United States,'" approved July twenty-one, eighteen hundred and

forty-eight, extended by the act of February twenty-two, eighteen hundred and forty-nine, shall be construed to embrace the widows and orphans of all persons designated therein, who died while in actual service in the late war with Mexico, or in going to and returning from the same: and also, to the widows and orphans of all such persons as, having been honorably discharged, or having resigned, shall have died after the passage of said last mentioned act, or who may hereafter die of wounds received, or from disease contracted while in said service: *Provided*, That the army rolls showing the death of any of said persons in the army, shall be sufficient evidence to establish that fact.

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The children of soldiers, embraced in the 1st section of act of 4th July, 1836, who have died, leaving widows and children, and the widow having married before the passage of the act—the children are entitled to the benefits of the act.  
*Opinion Attorney General, Aug. 3, 1836.*

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Pensions to widows and orphans, granted by the first section of the act of 4th July, 1836, commence from the date of the passage of the act in cases where the death of the soldier occurred anterior to that day. In other cases, from the death of the soldier.

The act embraces the cases of widows and orphans whose husbands and fathers might subsequently die, as well as those who did die before its passage.  
*Opinion Attorney General, October 24, 1836.*

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The widow and children of Paymasters are entitled.

*Opinion Attorney General, March 22, 1839.*

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In cases where the death of the soldier is caused by intemperance, the widow and children are not entitled.  
*Secretary of Interior, October 10, 1850.*

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Where it is shown that the husband died in the service, it is presumed that he died of disease contracted in the service, unless proof to the contrary is found.  
*Decision Secretary of the Interior.*

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A widow is not entitled under act of February 3, 1853, whose husband, in a time of peace, was killed by a party of marauding Indians.

*Decision Secretary of the Interior.*

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#### PROOF.

By law, in all applications for pensions by the widows of deceased soldiers, under the act of 21st July, 1848, the returns on the rolls of the disease of which the soldier died, and the official opinion of the Surgeon General founded thereon, that from the nature of the disease it was contracted while the soldier was in the line of his duty, *shall be* considered satisfactory evidence thereof; and it is the duty of the Commissioner of Pensions in all cases of application for pensions under said act, to apply to the proper officers for said evidence, without requiring the applicant to furnish the same.

## FORM OF DECLARATION AND REGULATIONS.

1. Applicants must produce the best proof the nature of the case will allow, as to the service of the deceased officer or soldier, the time when he died, and the complaint of which he died, and the supposed cause of his disease. It must be clearly shown in what company and what regiment, or corps, he served, and the grade he held. Such proof must be had, either from the records of the War Department, the muster rolls, the testimony of commissioned officers, or the affidavits of persons of known respectability. From similar sources evidence must be derived as to the period and cause of the death of the officer or soldier.

2. The legality of the marriage, the name of the widow, with those of her children who may have been under sixteen years of age at the time of the father's decease, with the State or Territory and county in which she and they reside, should be established. The legality of the marriage may be ascertained by the certificate of the clergyman who joined them in wedlock, or the testimony of respectable persons having knowledge of the fact. The age and number of children may be ascertained by the deposition of the mother, accompanied by the testimony of respectable persons having knowledge of them, or by transcripts from the parish registers, duly authenticated. The widow, at the time of allowing the half-pay, or placing her on the list for it, must show that she has not again married, and must, moreover, repeat this at the time of receiving each and every payment thereof; because in case of her marrying again, the half-pay to her ceases, and the half-pay for the remainder of the time shall go to the child or children of the decedent. This may be done by the affidavits of respectable persons having knowledge of the case.

3. In cases where there are children, and no widow, their guardian will, of course, act for them, and establish their claims as prescribed in the foregoing regulations, and receive their stipends for them.

4. In a case where the service of the deceased officer or soldier is clearly proved by record or documentary evidence, or the affidavit of a commissioned officer, showing the grade and length of service of the deceased, the particulars in relation to the service are not required to be set forth in the claimant's declaration, except so far as to show that the claimant or claimants is, or are, the widow or children of the deceased.

5. Applicants unable to appear in court by reason of bod-

ily infirmity, may make their declarations before required, before a judge, or justice of a court of record of the county in which they reside; and the judge, or justice, will certify that the applicant cannot, from bodily infirmity, attend the court.

6. Whenever any official act is required to be done by a judge, or justice of a court of record, or by a justice of the peace, the certificate of the Secretary of State, or of the Territory, or of the proper clerk of the court, or county, under his seal of office, will be annexed, stating that such a person is a judge, or justice of a court of record, or a justice of the peace, and that the signature annexed is his genuine signature.

7. The judge, or justice, who may administer an oath, must, in every instance, certify to the credibility of the affiant.

#### DECLARATION

In order to obtain the benefit of the third section of the Act of Congress of the 4th July, 1836.

STATE, TERRITORY, OR DISTRICT }  
OF ..... } ss.

On this ..... day of ....., personally appeared before the ..... of the ....., A.B. a resident of ....., in the County of ....., and State, Territory, or District of ....., aged ..... years, who being first duly sworn according to law, doth, on her oath, make the following declaration, in order to obtain the benefit of the provision made by the act of Congress, passed July 4, 1836: That she is the widow of ....., who was a [here insert the rank the husband held in the army, navy, or militia, as the case may be, and specify the service performed, as directed in rule number four of these regulations.]

She further declares that she was married to the said ....., on the ..... day of ....., in the year seventeen hundred and .....; that her husband, the aforesaid ....., died on the ..... day of .....; and that she has remained a widow ever since that period, as will more fully appear by reference to the proof hereto annexed.

SWORN TO AND SUBSCRIBED, on the day and year above written, before.....

#### RENEWAL OF HALF-PAY PENSIONS,

GRANTED UNDER ACTS OF JULY 4TH, 1836, OR JULY 21ST, 1848.

AN ACT to continue half-pay to certain Widows and Orphans.

APPROVED, FEBRUARY 3, 1853.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all widows and orphans who were granted and allowed five years' half-pay by the provisions of the act approved the twenty-first day of July, one thousand eight hundred and forty-eight,*

entitled "An act amending the act granting half-pay to widows or orphans where their husbands or fathers have died of wounds received in the military service of the United States, in case of deceased officers and soldiers of the militia and volunteers, passed July fourth, one thousand eight hundred and thirty-six," or an act approved the twenty-second of day February, one thousand eight hundred and forty-nine entitled "An act granting five years' half-pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regulars and volunteers," be, and they are hereby, granted a continuance of said half-pay, under like limitations and restrictions, for a further period of five years, to commence at the expiration of the half-pay provided for by the aforesaid acts: *Provided, however,* That in case of the death or marriage of such widow before the expiration of said term of five years, the half-pay for the remainder of the term shall go to the child or children of the deceased officer or soldier whilst under the age of sixteen years; and in like manner the child or children of such deceased, when there is no widow, shall be paid no longer than while there is a child or children under the age aforesaid: *And provided further,* That no greater sum shall be allowed in any case to the widow or the child or children of any officer than the half-pay of a lieutenant-colonel: *Provided, further,* That the act approved the twenty-second of February, one thousand eight hundred and forty-nine, "granting five years' half-pay to certain widows and orphans of officers, non-commissioned officers, musicians, and privates, both regular and volunteer," be so extended and construed as to embrace the widows and minor heirs of the officers, non-commissioned officers, musicians, and privates of the regulars, militia, and volunteers of the war of eighteen hundred and twelve, and of the various Indian wars since 1790.

SEC. 2. *And be it further enacted,* That the widows of all officers, non-commissioned officers, musicians, and privates, of the revolutionary army, who were married subsequent to January, A.D. eighteen hundred, shall be entitled to a pension in the same manner as those who were married before that date.

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### REGULATIONS AND FORMS.

1. Under the provisions of the 1st section of this act, all widows and orphans who were granted and allowed five years' half-pay by the provisions of the act of July 4, 1836,

extended by the act of July 21st, 1848, and further extended by the act of February 22d, 1849, are entitled to a continuance of said half-pay for a further period of five years, to commence at the expiration of the half-pay provided for by the aforesaid acts under the restriction and limitations in the said acts specified.

To obtain these benefits, the applicant must make a declaration, under oath, before some magistrate in the county where the declarant resides, or before some other person qualified to administer oaths, (which declaration must be duly authenticated,) according to the form appended hereto.

The official character of the magistrate must be duly certified by the proper officer under his seal of office, and the magistrate, or other person, (qualified to administer oaths,) must certify that the declarant is personally known to him.

It will be observed, that in the event of the death or marriage of the widow, and where the application is made on behalf of a child or children under sixteen years of age, the half-pay is not continued after such child or children shall have passed the age of sixteen.

2. Under the last proviso of the 1st section, the widows of officers, non-commissioned officers, musicians, and privates of the regulars, militia, and volunteers of the war of 1812, who were not entitled by the provisions of the act of April 16th, 1816, and also in the various Indian wars since 1790, who remained to the date of their death in the service of the United States, or who having received an honorable discharge, and who have died since their return to their usual place of residence of wounds received, or from disease contracted while in the line of their duty, are entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, or at the time of receiving such wound, or contracting such disease, for and during the term of five years, to commence at the time of completing the evidence in said case.

In case there be no such widow, or in case of her marriage or death, before the expiration of said five years, the half-pay, or such part thereof as remained at the time of her marriage, or decease, will go to the minor heirs of the deceased.

In applications for these benefits, the party must make a declaration in writing before a Court of Record, according to the form appended hereto, and must produce proof of the service of the deceased officer or soldier; the time of his death, and that it was occasioned by wounds re-

ceived, or from disease contracted, while in service, in the line of his duty.

If the applicant be a widow, she must prove the legality of her marriage, and that she has remained a widow since the death of her husband.

If the applicant be a minor child of the deceased officer or soldier, he must prove the marriage of his parents, their death, and his minority.

#### DECLARATION

In order to obtain the renewal of the half-pay provided for in the 1st section of the act of February 3d, 1853.

STATE OF ..... }  
COUNTY OF ..... } ss.

On this..... day of....., in the year one thousand eight hundred and..... personally appeared before the subscriber, a Justice of the Peace in and for said county,..... a resident of..... in the County of....., aged..... years, who being first duly sworn according to law, doth on her oath, make the following declaration in order to obtain the benefits of the provision made by the act of Congress, passed the 3d February, 1853, granting the RENEWAL of half-pay to certain widows and orphans.

That she is the widow of....., who was a..... in the company..... commanded by Captain....., in the regiment....., in the war with.....

That she is the identical person who was pensioned under the 1st section of the act of 4th July, 1836, or 21st July, 1848, at the rate of \$..... per month: which said pension she received from the agent for paying pensions in....., in the State of..... That her former pension certificate has been surrendered..... She further declares that she is still a widow.

SWORN TO AND SUBSCRIBED before me, on the }  
day and year first above written; and I certify }  
that I am not interested in said claim as attorney, }  
agent, or otherwise. }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., personally appeared before me, the subscriber a Justice of the Peace, in and for said County,..... and..... who are to me well known to be residents of the county of....., and credible witnesses, and who being by me first duly sworn, depose and say, that they are well acquainted with Mrs. ...., who subscribed and swore to the above declaration in their presence—that they have known her for at least..... years last past. That she is the widow of....., who served in the company and regiment therein mentioned. That she is the identical person to whom a pension has heretofore been granted, at the rate of \$..... per month; and that she is still a widow.

SUBSCRIBED AND SWORN to before me, this..... }  
day of....., A.D. 18... }  
..... J. P.

I hereby constitute and appoint..... my true and lawful Attorney, hereby authorizing him to prosecute this my claim for a renewal of my pension, and to receive the certificate to be issued thereon.

Dated this..... day of....., A.D. 18...

WITNESS..... [SEAL]

STATE OF ..... } ss.  
COUNTY OF .....

I, ....., Clerk of the Court of ....., do hereby certify, that ....., Esq., before whom the foregoing affidavits were made, was at the time of so doing a Justice of the Peace, in and for said County, duly commissioned and sworn, and that his signatures are genuine.

Witness my hand, and the seal of said Court,  
this .... day of ....., A.D. 18....

..... Clerk.

#### DECLARATION

In order to obtain the benefit of the last proviso of the 1st section, act of 3d February, 1853.

STATE OF ..... } ss.  
COUNTY OF .....

On this ..... day of ....., A.D. 185., before the court of ....., held in and for the County and State aforesaid, personally appeared ....., aged ..... years, a resident of ....., in the County of ....., and State of ....., who being duly sworn according to law, doth on her oath make the following declaration in order to obtain the benefits of the provision made by the law of the United States, passed the 3d of February, 1853; that she is the widow of ....., deceased, who was a ....., in the company ....., commanded by Captain ....., in the regiment ....., commanded by ....., in the War with .....

That her husband entered the service at ....., about the .... day of ..... A.D. ....; for the term of ..... and continued in actual service in said War, for the term of ..... and died ..... on the .... day of ..... A.D. ....; in consequence of .....

She further states that she was married to the said ..... in ..... State of ..... : on the .... day of ....., A.D. ....; by one ..... a ..... : and that her name before her said marriage was .....; that her husband died as above, at ..... on the .... day of ....., A.D. ...., and that she is still his widow, and that she has remained his widow since that period.

And she further states that there is ... public record of her marriage—and that there is ... private record of her marriage ... as will more fully appear by reference to the proof hereto annexed. That she cannot file herewith his Certificate of discharge for the reason that ..... That the following are the names and date of the birth of each and all of her children now living, viz.: ..... She hereby appoints ..... her true and lawful Attorney, with power of substitution, to prosecute this her claim for a pension, to receive the Certificate when issued, and to do all other acts necessary and proper in the premises.

WITNESS : .....

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent ..... and believe her to be as is above stated, and that she is of the age above stated; and further, that I am not interested in this her claim as Attorney or otherwise.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of ..... Court, for the County aforesaid, this ..... day of ..... of .....

..... Clerk.

STATE OF ..... } ss.  
COUNTY OF .....

On this ..... day of ....., A.D. 185., personally appeared before the subscriber, a Justice of the Peace, in and for the County aforesaid, duly authorized to administer oaths, ..... a resident of said County, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs. ...., the above named applicant for a pension—that he has known her for ..... years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be



the "....." and printed in the year.....; and that the said record, as far as relates to the marriage of the said applicant and the soldier above named and of his death, is as follows, which is an exact copy of the same : ..... and that the said deponent is not interested in the claim.

SUBSCRIBED AND SWORN to, the day and year first above written, before me, and I certify that I am in no manner interested. ....

*Justice of the Peace.*

STATE OF..... }  
COUNTY OF..... } ss.

On this....day of....., A.D. 185., personally appeared before me, the undersigned, a Justice of the Peace, in and for said County,.....and ..... who are to me well known, and who are credible witnesses, and who being by me duly sworn, depose and say, that they are each well acquainted with Mrs....., the above applicant for a pension—that they have known her for.....years last past. That they were acquainted with..... her late husband, having known him for.....years previous to his death; that they, the said.....and.....lived together as husband and wife, and were reputed so to be, that deponents never heard the fact of their marriage disputed or questioned. That the said.....died on the.....day of....., 18., in consequence of.....; and the said.....has been since that day, and still is reputed to be his widow, which deponents believe to be the fact. That she has never married since her said husband's death, and still is his widow, and that her said husband was the identical man mentioned as a soldier in her declaration above, and further, that they were present and saw.....execute the foregoing affidavit by.....to the foregoing declaration, and making oath thereto in due form of law, and further, that they, deponents, do reside in the county aforesaid.

WITNESS.....

SWORN TO AND SUBSCRIBED before me, this....day of....., A.D., 18..

..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I hereby certify, that..... Esq., before whom the foregoing affidavits and power of attorney were made and acknowledged, and who has therunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signatures thereto are genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of.... Court, for the County aforesaid, this.....day of.....185..

..... Clerk of.....

### STEAMSHIP SAN FRANCISCO.

AN ACT for the relief of the United States troops who were sufferers by the recent disaster to the Steamship San Francisco.

APPROVED, MARCH 27, 1854.

SEC. 2. "And be it further enacted, That the widows and minor children of those officers, non-commissioned officers, and privates, who perished by this disaster, or who died from disease in consequence thereof, shall be allowed pensions in the same manner, in all respects as if the said officers, non-commissioned officers, and privates, had been killed in battle."

## REGULATIONS AND FORMS.

The following regulations approved by the Secretary of the Interior, have been adopted for carrying into effect the provisions of the last clause of the second section of the Act of March 27th, 1854, entitled "An act for the relief of the United States troops who were sufferers by the recent disaster to the steamship San Francisco."

By the provisions of the second section of the act approved March 27th, 1854, the widow, or, if there be no widow, the minor children of each of the officers, non-commissioned officers, and privates, who perished by the recent disaster of the steamship San Francisco, or who have died from disease, in consequence thereof, are entitled to pensions in the same manner, in all respects, as if said officers, non-commissioned officers, and privates, had been killed in battle.

The gratuity promised by this Act is half the monthly pay, for five years, that the deceased officer or soldier was entitled to receive, according to the pay proper of his rank, at the time of his decease—to commence at the time of completing the evidence in each case. This sum is payable semi-annually, to the widow of such officer or soldier, during said term of five years, if she so long remain a widow; but, if she marry or die before the expiration of said five years, the balance of said pension will be paid to the minor children of said deceased officer or soldier. If there be no such widow, the said pension will be paid to said minor children, as aforesaid. By minor children, is meant children under sixteen years of age.

The signature of the declarant must be attested by two witnesses, who can swear to her identity, whose residence must be given, and whose credibility must be certified by some person known to the Department.

If the applicant be a widow, she must prove her marriage with her deceased husband, by such evidence as would establish the fact in a civil suit between parties before a court of justice. In case there is a public record of the marriage, a certified copy should be filed.

If the application be for the benefit of the minor children of the deceased officer or soldier, the death or marriage of his widow, and the exact ages of all the surviving minor children, and the guardianship of the applicant, must be proved by legal evidence.

In both applications, the death of the officer or soldier must be established.

The official character of the magistrate before whom any papers are verified must be authenticated in the usual form.

## APPLICATION

For the benefits of this act, may be made according to the following forms :

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of ....., A.D. 185..., before the Court of ..... now sitting, the same being a court of record, and held within and for the County and State aforesaid, personally appeared ..... aged..... years, a resident of..... in the County of ..... and State of.....; who being first duly sworn according to law, doth on her oath, make the following declaration, in order to obtain the benefit of the second section of the act of Congress, passed March 27, 1854, that she is the widow of..... deceased, who was a..... in the company..... commanded by Captain..... in the regiment of the U. S. Army, commanded by....., and was on board the steamship San Francisco, on the 21st day of December, 1853, and remained on board said ship until the disaster by which said ship was lost; and that, in consequence of said disaster, her husband, the said....., perished on or about the..... day of ....., 1854, or (died from disease contracted in consequence of said disaster, on the..... day of ....., 1854.)

She further states that she was married to the said..... in..... State of..... on the..... day of....., A.D. 18...; by one..... a.....; and that her name before her said marriage was.....; and that she is still his widow.

And she further states that there is..... public record of her marriage— and that there is..... private record of her marriage.....

She hereby appoints..... her true and lawful Attorney, with power of substitution, to prosecute this her claim for a pension, to receive the Certificate when issued, and to do all other acts necessary and proper in the premises.

WITNESS:.....

SWORN TO AND SUBSCRIBED before me, in open court, on the day and year first above mentioned, and I hereby certify that I know the said deponent..... and believe her to be as is above stated, and that she is of the age above stated; and further, that I am not interested in this her claim as Attorney or otherwise.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of ..... Court, for the County aforesaid, this..... day of..... 185...  
..... Clerk of

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., A.D. 185..., personally appeared before the subscriber, a Justice of the Peace, in and for the County aforesaid, duly authorized to administer oaths..... a resident of said County, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs....., the above named applicant for a pension—that he has known her for..... years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be the “.....” and printed in the year.....; and that the said record, as far as relates to the marriage of the said applicant and the soldier above named, and of his death, is as follows; which is an exact copy of the same:..... and that the said deponent is not interested in the claim.

SUBSCRIBED AND SWORN TO, the day and year }  
first above written, before me, and I certify }  
that I am in no manner interested. }  
..... Justice of the Peace. }

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., A.D. 185..., personally appeared before me, the undersigned, a Justice of the Peace, in and for said County,..... and..... who are to me well known, and who are credible witnesses, and who being by me duly sworn, depose and say, that they are each well acquainted with Mrs.....

WITNESS,.....

SWORN TO AND SUBSCRIBED before me, }  
this.....day of...., A.D. 18.. }  
..... J. P.

I hereby certify, that . . . . ., Esq., before whom the foregoing affidavits and power of attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing, a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signatures thereto are genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of  
..... Court, for the county aforesaid, this..... day of..... 185..  
..... Clerk of.....

In order to obtain the benefit of the second section of the act of March 27, 1854, for the minor children of a deceased officer (or soldier.) See preceding regulations.

On this ..... day of ....., A.D. 185., personally appeared before the Court ..... of ..... now sitting, the same being a Court of Record, A. B., who, being first duly sworn, according to law, doth make the following declaration, in order to obtain the benefit of the second section of the act of Congress, passed March 27, 1854: That he is the guardian of C. D., a minor child of E. F., who was an officer (or soldier) in the army of the United States, on board the steamship San Francisco, on the 21st day of December, 1853, and remained on board until the disaster by which said ship was lost; and that, in consequence of said disaster, the said E. F. perished, on or about the ..... day of ....., 1854, (or died from disease contracted in consequence of said disaster, on the ..... day of ..... 185..)

He further declares, that the said C. D. was born on the ..... day of ..... 185., and is the sole surviving child of the said E. F. under the age of sixteen years, and that the said E. F. has no widow now living, (or she has married since the death of the said E. F.)



# NAVY INVALID PENSIONS.

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OF THE NAVY PROPER, MARINES AND PRIVATEERS.

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## INVALIDS—NAVY PROPER AND MARINES.

AN ACT providing a naval armament.

APPROVED, JULY 1, 1791.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby empowered, should he deem it expedient, to cause the frigates United States, Constitution, and Constellation, to be manned and employed.

SEC. 2. *And be it further enacted,* That there shall be employed on board each of the ships of forty-four guns, one captain, four lieutenants, two lieutenants of marines, one chaplain, one surgeon, and two surgeon's mates; and in the ship of thirty-six guns, one captain, three lieutenants, one lieutenant of marines, one surgeon, and one surgeon's mate.

SEC. 3. *And be it further enacted,* That there shall be employed, in each of the said ships, the following warrant officers, who shall be appointed by the President of the United States, to wit: one sailing-master, one purser, one boatswain, one gunner, one sailmaker, one carpenter, and eight midshipmen; and the following petty officers, who shall be appointed by the captains of the ships, respectively, in which they are to be employed, viz: two master's mates, one captain's clerk, two boatswain's mates, one cockswain, one sailmaker's mate, two gunner's mates, one yeoman of the gunroom, nine quarter-gunners (and, for the two larger ships, two additional quarter-gunners), two carpenter's mates, one armorer, one steward, one cooper, one master-at-arms, and one cook.

SEC. 4. *And be it further enacted,* That the crews of each of the ships of forty-four guns shall consist of one hundred and fifty seamen, one hundred and three midshipmen and ordinary seamen, three sergeants, three corporals, one drum, one fife, and fifty marines; and that the crew of the ship of thirty-six guns, shall consist of one hundred and thirty able seamen and midshipmen, ninety ordinary seamen, two sergeants, two corporals, one drum, one fife, and forty marines, over and above the officers herein before mentioned.

SEC. 11. *And be it further enacted,* That if any officer, non-commissioned officer, marine, or seaman, belonging to the navy of the United States, shall be wounded or disabled, while in the line of his duty in public service, he shall be placed on the list of the invalids of the United States, at such rate of pay, and under such regulations, as shall be

directed by the President of the United States; *Provided always*, That the rate of compensation to be allowed for such wounds or disabilities, to a commissioned or warrant officer, shall never exceed, for the highest disability, half the monthly pay of such officer at the time of his being so disabled or wounded; and that the rate of compensation to non-commissioned officers, marines, and seamen, shall never exceed five dollars per month: *And provided, also*, That all inferior disabilities shall entitle the person so disabled to receive an allowance proportionate to the highest disability.

AN ACT for the government of the navy of the United States.

APPROVED, MARCH 2, 1790.

SEC. 8. *And be it further enacted*, That every officer, seaman, or marine, disabled in the line of his duty, shall be entitled to receive, for his own life and the life of his wife, if a married man at the time of receiving the wound, one-half his monthly pay.

SEC. 9. *And be it further enacted*, That all the money accruing, or which has already accrued, from the sale of prizes, shall be and remain forever a fund for the payment of the half-pay to the officers and seamen who may be entitled to receive the same; and if the said fund shall be insufficient for this purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied as Congress may hereafter direct by law, to the making of further provision for the comfort of the disabled officers, seamen, and marines, and for such as may not be disabled, who may merit, by their bravery, or their long and faithful services, the gratitude of their country.

SEC. 10. *And be it further enacted*, That the said fund shall be under the management and direction of the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, for the time being, who are hereby authorized to receive all such sums as the United States may be entitled to, from the sale of prizes, and to invest the same, and the interest arising therefrom, in such of the six per cent. or other stock of the United States, as a majority of them, from time to time, shall determine to be most advantageous; and it shall be the duty of the said commissioner to lay before Congress, every year, in the first week of their annual meeting, a minute and correct statement of their proceedings, in relation to the management of said fund.



## NAVY PROPER AND MARINES.

The act following, of April 23, 1800, ~~repeals~~ the act of March 2, 1799, and is the act under which naval pensions are adjusted:

AN ACT for the better government of the navy of the United States.

APPROVED, APRIL 23, 1800.

SEC. 8. *And be it further enacted*, That every officer, seaman, or marine, disabled in the line of his duty, shall be entitled to receive for life, or during his disability, a pension from the United States, according to the nature and degree of his disability, not exceeding one-half his monthly pay.

SEC. 9. *And be it further enacted*, That all money accruing, or which has already accrued, to the United States from the sale of prizes, shall be and remain forever a fund for the payment of pensions and half-pay, should the same be hereafter granted, to the officers and seamen who may be entitled to receive the same; and if the said fund shall be insufficient for the purpose, the public faith is hereby pledged to make up the deficiency; but if it should be more than sufficient, the surplus shall be applied to the making of further provision for the comfort of disabled officers, seamen, and marines, and for such as, though not disabled, may merit by their bravery, or long and faithful services, the gratitude of their country.

SEC. 10. *And be it further enacted*, That the said fund shall be under the management and direction of the Secretary of the Navy, the Secretary of the Treasury, and the Secretary of War, for the time being, who are hereby authorized to receive any sums to which the United States may be entitled from the sale of prizes, and employ and invest the same, with the interest arising therefrom, in any manner which a majority of them may deem most advantageous. And it shall be the duty of the said commissioners to lay before Congress annually, in the first week of their session, a minute statement of their proceedings relative to the management of said fund.

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AN ACT in relation to the navy pension fund.

APPROVED, MARCH 23, 1804.

SEC. 6. *And be it further enacted*, That the commissioners of the navy pension fund be, and they are hereby authorized and directed to make such regulations as may to them appear expedient, for the admission of persons on the roll of navy pensioners, and for the payment of the pensions.

**AN ACT** renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers, in the navy, and to their widows.

APPROVED AUGUST 11, 1848.

**SEC. 2.** *And be it further enacted,* That engineers, firemen, and coal-heavers in the navy shall be entitled to pensions in the same manner as officers, seamen, and marines; and the widows of engineers, coal-heavers, and firemen, in the same manner as the widows of officers, seamen, and marines: *Provided,* That the pension of a chief engineer shall be the same as that of a lieutenant in the navy; and a pension of the widow of a chief engineer the same as that of the widow of a lieutenant in the navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; and the pension of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; and the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; the pension of the widow of a fireman or coal-heaver the same as that of the widow of a seaman: *And provided further,* That an engineer, fireman, or coal-heaver shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first of August, eighteen hundred and forty-two, nor shall the widow of an engineer, fireman, or coal-heaver be entitled to any pension by reason of the death of her husband, if his death was prior to the said date.

**SEC. 3.** *And be it further enacted,* That the amount of pension in every case arising under this law [is] not to exceed the half-pay of the deceased officer, seaman, or marine, as it existed in January, eighteen hundred and thirty-five, or such rate of pension as is allowed by this act.

**AN ACT** for the establishing and organizing a marine corps.

APPROVED, JULY 11, 1792.

**SEC. 4.** *And be it further enacted,* That the officers, non-commissioned officers, privates, and musicians, aforesaid, shall take the same oath, and shall be governed by the same rules and articles of war, as are prescribed for the military establishment of the United States, and by the rules for the regulation of the navy, heretofore, or which shall be established by law, according to the nature of the service in which they shall be employed, and shall be entitled to the same

allowance, in case of wounds or disabilities, according to their respective ranks, as are granted by the act "to ascertain and fix the military establishment of the United States."

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### OF PRIVATEERS.

AN ACT concerning letters of marque, prizes, and prize-goods.

APPROVED, JUNE 25, 1812.

SEC. 17. *And be it further enacted*, That two per centum on the nett amount (after deducting all charges and expenditures) of the prize-money arising from captured vessels and cargoes, and on the nett amount of the salvage of vessels and cargoes recaptured by the private armed vessels of the United States, shall be secured and paid over to the collector, or other chief officer of the customs, at the port or place in the United States at which such captured or recaptured vessel may arrive; or to the consul, or other public agent of the United States, residing at the port or place not within the United States, at which such captured or recaptured vessels may arrive. And the moneys arising therefrom shall be held, and hereby is pledged by the Government of the United States, as a fund for the support and maintenance of the widows and orphans of such persons as may be slain, and for the support and maintenance of such persons as may be wounded and disabled, on board the private armed vessels of the United States, in any engagement with the enemy, to be assigned and distributed in such manner as shall hereafter by law be provided.

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AN ACT regulating pensions to persons on board private armed ships.

APPROVED, FEBRUARY 13, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the two per centum reserved in the hands of the collectors and consuls, by the act of June, eighteen hundred and twelve, entitled "An act concerning letters of marque, prizes, and prize-goods," shall be paid to [into] the Treasury, under the like regulations provided for other public money, and shall constitute a fund for the purposes provided for by the seventeenth section of the before-mentioned act.

SEC. 2. *And be it further enacted*, That the Secretary of the Navy be authorized and required to place on the pension list, under the like regulations and restrictions as are used in relation to the Navy of the United States, any officer, seaman, or marine, who, on board of any private armed ship or vessel

bearing a commission of letter of marque, shall have been wounded, or otherwise disabled, in any engagement with the enemy : allowing to the captain a sum not exceeding twenty dollars per month ; to lieutenants and sailing-master, a sum not exceeding twelve dollars each per month ; to marine-officer, boatswain, gunner, carpenter, master's mate, and prize-masters, a sum not exceeding ten dollars each per month ; to all other officers, a sum not exceeding eight dollars each per month—for the highest rate of disability, and so in proportion ; and to a seaman, or acting as a marine, the sum of six dollars per month, for the highest rate of disability, and so in proportion : which several pensions shall be paid, by direction of the Secretary of the Navy, out of the fund above provided, and from no other.

AN ACT to amend and explain the act regulating pensions to persons on board of private armed-ships.

APPROVED, AUGUST 2, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the act regulating pensions to persons on board private armed ships shall be so construed as to authorize the Secretary of the Navy to place on the pension list, under the restrictions and regulations of the said act, any officer, seaman, or marine, belonging to any private armed ship or vessel of the United States, bearing a commission of letter of marque, who shall have been wounded, or otherwise disabled, in the line of their duty as officers, seamen, or marines, of such private armed ship or vessel.

NOTE.—The Privateer Fund has been exhausted. An appropriation for the payment of Privateer Pensions was made by Congress for the fiscal year ending June 30, 1854, as will appear by the following circular :

PRIVATE PENSIONERS.—Congress having, by the act approved May 21, 1854, made an appropriation for paying the pensions of invalids, (who were wounded on board of private armed vessels during the last war with Great Britain,) to the 30th of the present month, inclusive, parties interested are hereby notified that the following evidence of their being entitled to the benefits of the law will be required, viz :

1. Sworn declaration or memorial, setting forth the vessel to which the pensioner belonged, his rank or station, when and in what manner disabled, monthly rate of pension, and date to which last paid.
2. Evidence of identity, either by affidavit of two credible witnesses or the certificate of a justice of the peace.

The above evidence to be authenticated by the certificate, under seal, of the proper officer, showing the official character of the justice of the peace ; and to be forwarded, together with the original pension certificate to this office.

L. P. WALDO, *Commissioner of Pensions.*

PENSION OFFICE, June 3, 1854.

No further appropriation has been made.

[Declaration of an applicant for a privateer invalid pension.]

STATE, [TERRITORY, OR DISTRICT] OF..... }  
COUNTY [.....] OF..... } ss.

On this ..... day of ....., one thousand eight hundred and fifty ....., personally appeared before me ....., a justice of the peace within the county and State aforesaid ....., a resident of ....., in the State of ....., aged ..... years, who being first sworn according to law, doth on his oath make the following declaration: That he is the identical ....., who was a ..... in the privateer service: that he ..... on the ..... day of ....., in the year of ....., at ..... in the State of ....., in the .....

[Here the applicant must state the name and class of the private armed ship, duly commissioned, on board of which he served; also the rank in which he served, the name of the officer in command, and the engagement, in the line of his duty, in which he incurred his disability—and make due reference to the “transcript” from the “journal” of the commanding officer, communicated to the Secretary of the Navy.]

He makes this declaration for the purpose of being placed on the privateer pension roll of the United States, and of obtaining the pension to which he may be entitled, under the act of ....., granting pensions to persons disabled in the privateer service of the United States.

(Signed) A.... B....

I certify that the foregoing declaration was sworn to, before me, this ..... day of ....., 185.... C.... D...., J. P.

## DECISIONS RESPECTING NAVY INVALID PENSIONS.

Navy Invalid Pensioners are included in act of March 3d, 1819, regulating payments to invalids under various laws.

OFFICE OF THE ATTORNEY GENERAL, *January 23, 1821.*

SIR: The act of Congress of the 3d March, 1819, entitled “An act regulating the payments to invalid pensioners,” being universal in its language, applying to “*all cases of application for the payment of pensions to invalids under the several laws of Congress granting pensions to invalids;*” and the policy of the provision of the act also applying to all cases equally, I can discern no reason for excepting navy pensioners from its operation; and am, therefore, of opinion that they are not excepted. WM. WIRT.

To the SECRETARY OF THE NAVY.

By the word “disabled” in act of 23d April, 1800, Congress means any degree of personal disability which renders the individual less able to provide for his subsistence.

The act of July 10, 1832, transferred to the Secretary of the Navy, (now the Secretary of the Interior,) the duty of deciding whether the disability is such as to entitle the claimant to a pension, and also the amount which he shall receive.

ATTORNEY GENERAL’S OFFICE, *Dec. 17, 1832.*

SIR: In the case of Captain Duncan, the question appears to me to turn on the meaning of the word “disabled,” in the act of Congress of April 23, 1800. Does it mean that the

officer, seaman, or marine must be disabled from performing the duties of his station, before he can receive a pension? Or does it mean any degree of personal disability which renders him less able to provide for his subsistence? I think the latter interpretation of the word "disabled" is most consonant to the spirit and object of the law. And, indeed, it is the only one consistent with that provision in the statute which directs that the pension shall be graduated "according to the nature and degree of his disability," not exceeding one-half of his monthly pay.

The act of 1804, March 26, gave to the commissioners of the navy pension fund the power to make such regulations as they might deem expedient for the admission of persons on the roll of navy pensioners.

Under the law, the commissioners had the power to define what extent of injury would constitute a disability within the meaning of the law, and to prescribe the rules by which the amount of pensions should be regulated in different degrees of disability. For example: a wound might have diminished the strength of a limb, without having in any degree impaired the capacity of the officer to discharge the duties of his station, or subjected him to any additional expense in the performance of his duties. Or, while it left him fully competent to discharge the duties of his station, it might still subject him to additional expenses, by rendering the assistance of others necessary in performing those offices about his person, which, before the injury, he could perform for himself. Or the wound might be such as to disable him altogether from performing the duties of his station, and thereby compel him to leave the service. In the first of these cases, it would have rested with the commissioners to decide whether the party was entitled to any pension while he continued in service, inasmuch as the injury did not diminish his means of subsistence. In the second case, it would have rested with them to graduate his pension between the lowest and highest sum, having reference to the additional burdens to which his ordinary pay and emoluments were subject by reason of his wound, and having regard also to any other circumstances which the commissioners might deem it just to consider in determining on the amount to be allowed. And, in the third case, the highest amount would seem to be the sum contemplated by law.

As Captain Duncan is still in service, and fully competent to discharge the duties of his station, his case comes within either the first or second classes above stated. And as all the powers and duties of the commissioners of the navy pen-

sion fund have, by the act of July 10, 1832, been devolved upon the Secretary of the Navy, I think it now rests exclusively with yourself to decide upon the principles above stated, and the facts which are in evidence before you, whether Captain Duncan is entitled to admission on the roll of navy pensioners ; and if he is so entitled, for what amount of pension.

I have not thought it necessary to refer in this opinion particularly to the provisions of the act of April 16, 1816, because it provides for a peculiar class of cases, differing altogether from that of Captain Duncan. R. B. TANEY.

To the SECRETARY OF THE NAVY.

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ATTORNEY GENERAL'S OFFICE, *December, 21, 1832.*

SIR : In the opinion which I had the honor to send you a few days ago, in the case of Captain Duncan, I stated what appears to me to be the true construction of the acts of Congress conferring pensions on officers, seamen, and marines, disabled in the line of their duty.

The case of Captain Jones, to which you have now called my attention, does not, I think, give rise to any question of law which is not substantially answered in that opinion. But it may be proper, in addition to what I have there said, to explain more fully the principles which are more peculiarly applicable to the case of Captain Jones.

I understand Captain Jones to object to the allowance heretofore made him by the commissioners of the navy pension fund, on two grounds : 1st, that his pension ought to have commenced as early as 1815, instead of 1825 ; 2d, that it was, in the first instance, fixed at a lower sum than he was entitled to.

The power given to the commissioners by the act of March 26, 1804, to make such regulations as might to them appear expedient for the admission of persons on the roll of navy pensioners, authorized the commissioners to fix the period at which the pensions should commence, and also the principles by which the amount was to be graduated. They might have declared that the pension should begin from the time of the disability ; or they might have determined that it should commence at the date of the application and exhibition of proof, if they deemed the latter period more consonant to the spirit of the law. And in the absence of any regulations on the subject, it was their province to exercise a sound discretion in this respect, in every case as it came before them.

The commissioners have, it seems, fixed 1828 as the time for the commencement of the pension they allowed to Captain Jones. It is immaterial whether, in deciding upon this point, the commissioners were governed by what they considered to be the regulations; or whether, in the absence of any regulation, they exercised the discretion with which the law had clothed them. In either case, they were the competent authority to decide; and their decision is, I think, binding upon you, unless you are satisfied by the evidence before you that it was given under mistake of fact; and that the date of the commencement of the pension would have been fixed otherwise, but for this mistake. For example: if you are satisfied by the proof that the commissioners took 1828 as the period for the commencement of the pension, under the impression that the first application had been made at that time, when, in fact, it had been made earlier; and had remained altogether unacted on without any fault of Captain Jones,—then it is in your power to correct the mistake, if, in your judgment, justice to Captain Jones requires it; but whether justice to him does or does not require it, is a question exclusively for your own discretion. In the absence, however, of such proof of mistake as you may think sufficient, you cannot legally revise the decision heretofore given, either as respects the time of the commencement of the pension, or the sum allowed, so as to give your decision a retrospective operation. You may, indeed, at any time examine into the claims of the party; and if, from the evidence of increased disability, or new evidence of the extent of the disability, you believe he is entitled to a higher pension than he is then receiving, you may allow it, to the extent of the limits mentioned in the law. But the increase in such a case must be prospective, and begin from the date of your decision. It cannot be retroactive.

Referring you for the other principles involved in your decision to the opinion I have heretofore expressed in the case of Captain Duncan, I have, &c. R. B. TANEY.

To the SECRETARY OF THE NAVY.

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Invalids disabled before the passage of the act of 23d April, 1800, which established the navy pension fund, are not entitled to its benefits.

ATTORNEY GENERAL'S OFFICE, *Sept. 3, 1838.*

SIR: You state in your letter of the 31st August last, that Commodore David Porter claims a pension for wounds received in the line of his duty in the naval service, prior to the 23d of April, 1800, (the date of the law which establish-



ed the navy pension fund;) and my opinion is requested, whether your department has authority to grant pensions for deaths or disabilities which occurred before the pension fund was established.

My opinion is, that no such authority exists. Upon an examination of the act of 23d April, 1800, no expression is found indicating an intention on the part of Congress that the fund then provided should be subject to cases which had occurred before that time. The 2d section of the act of the 3d of March, 1837, it is believed, cannot be so construed as to embrace a class of persons not included in the former laws. The only object of that section is to make the pensions more ample in behalf of those entitled under pre-existing laws.

FELIX GRUNDY.

To the SECRETARY OF THE NAVY.

AN ACT for the more equitable administration of the Navy Pension Fund.

APPROVED, MARCH 3, 1837.

SEC. 2. *And be it further enacted*, That the pensions which may have been granted, or which may hereafter be granted, to officers, seamen and marines, in the naval service, disabled by wounds or injuries received while in the line of their duty, shall be considered to commence from the time of their being so disabled.

This act was repealed by the act of 23d August, 1842,—the repeal to take effect from July 1, 1842.

ATTORNEY GENERAL'S OFFICE, July 14, 1849.

\* \* \* \* Under the act of 1804, the practice, I understand, was to date the pension from the completion of the proof, and not the beginning of the disability; thus making the rule upon the subject of all pensions the same, by regulation under the provisions of the act of 1804, and by law under the very terms of the act of 10th April, 1806; that is to say, dating them from the proof of title, and not from the happening of the disability. In the subsequent case of James Cochrane, my immediate predecessor, Mr. Toucey, concurred fully in the view taken by Mr. Taney, and said that it rested with the Secretary of the Navy to decide according to the regulations now in force; or, if no regulations are, then to exercise a sound discretion—not an arbitrary one, but a discretion according to the settled course of the department. He also says: "If it has been the settled rule of the department to decide that the pension shall com-

mence at the time of completing the proofs, in conformity with the rule prescribed by Congress in the case of those pensioners who were disabled by known wounds received in the revolutionary war, it would certainly be very difficult for the Secretary, in the exercise of a sound discretion, at this late day to dissent from it.

I think both of these opinions are sound ; and, although it may be doubtful whether the section you refer to in the act of 1822, though general in its terms, does apply to other than revolutionary pensions, I think the claim in the present case cannot be allowed. It is even unsafe to unsettle a fixed and established practice in matters of this kind. It might subject the government to unlimited demands, and at a period when the means of detecting the injustice are lost.

REVERDY JOHNSON.

To the SECRETARY OF THE INTERIOR.

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AN ACT to provide for the payment of navy pensions.

APPROVED, AUGUST 16, 1841.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the sum of one hundred and thirty-nine thousand six hundred and sixty-six dollars and six cents is hereby appropriated, to be paid out of any money in the treasury not otherwise appropriated, for the payment of pensions and half-pay chargeable on the navy pension fund: *Provided*, That all widows or children of all naval officers, seamen, or mariners, now deceased, and entitled to receive or make proof of their pensions under the act of the third of March, eighteen hundred and thirty-seven, shall receive the same until the close of the next session of Congress ; but no widow or children of any naval officer, seaman, or marine, who may hereafter die, shall be entitled to any pension by virtue only of any provision in the said act.

SEC. 2. *And be it further enacted*, That no officer, seaman, or marine, entitled to a pension from the navy pension fund, who receives pay from the public treasury, shall receive more from the said fund than is sufficient to make the whole amount received from both of the above-named sources equal to the pay fixed by law for the grade to which the officer, seaman, or marine, may belong as an officer in the services in which he may be engaged during the year, so that no officer shall receive pay at the same time both as a pensioner and an officer in service.

By the following provision of the act making appropriations for revolutionary and other pensions, passed April 30, 1844, no person can draw both an invalid pension and the pay of his rank in the service :

*"And provided, also, That no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted be such as to have occasioned his employment in a lower grade, or in some civil branch of the service."*

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A lieutenant otherwise entitled to a pension, is not entitled to receive it whilst on duty and in receipt of his pay as an officer of the navy.

"Nor can he receive it when not on duty, whilst in receipt of the pay allowed to his grade."

ATTORNEY GENERAL'S OFFICE, *May 24, 1847.*

SIR: The question submitted from the Navy Department in the case of Lieutenant Brownell, are in substance as follows.

1st. Whether he is legally entitled to a pension while on duty, and in receipt of his pay as an officer of the navy?

2d. Whether, under the restrictions hereinafter recited, he can receive a pension when not on duty, but receiving the pay allowed to his grade while unemployed?

The act of February 18th, 1847, granting his pension, contains the following restrictions: that "the payment of said pension be subject to the provisions of the second section of an act passed August 17th, 1841, entitled 'An act for the payment of navy pensions.'"

The second section of the act of 1841, above referred to, recites the conditions upon which the payment of the pensions in certain cases is made to depend, as follows: "that no officer, seaman, or marine, entitled to a pension from the navy pension fund, who receives pay from the public treasury, shall receive more from the said fund than is sufficient to make the whole amount received from both the above named sources equal to the pay fixed by law for the grade to which the officer, seaman, or marine may belong as an officer in the services in which he may be engaged during the year, so that no officer shall receive pay, at the same time both as a pensioner and an officer in service." It is very clear, in my judgment, that Lieutenant Brownell's case must be governed, and the payments to him regulated, by

the rule prescribed in that section. It is expressly referred to, and recognized, in the act granting the pension. The intention of Congress is too clearly manifested to leave any room for doubt. Language more explicit or comprehensive could not well be employed. It is presumed that the reference to this office grew out of the suggestion in the letter of the Commissioner of Pensions, that the second section of the act of the 16th of August, 1841, was virtually repealed by the proviso of the act of April 30th, 1844, which declares, "that no person in the army, navy, or marine corps, shall be allowed to draw both a pension as an invalid and the pay of his rank or station in the service, unless the alleged disability for which the pension was granted, be such as to have occasioned his employment in a lower, or some civil branch of the service."

It is a mistake to suppose that the law of 1841 is entirely inoperative; and equally so, that it has been superseded in its application to this case. It often happens in legislation, when there is no repealing clause, that several provisions of law upon the same subject will be found to exist at the same time, as cumulative rules or remedies in no respect inconsistent, and frequently authorizing a wide disparity in the mode of proceeding. Courts have long manifested a disinclination to favor implied repeals, and never suffer the doctrine to prevail beyond the necessary implication, except in cases where there has been a general revision, or the laws upon a particular subject have been embodied, and reduced to a system. The principal, when correctly understood and properly applied, is never extended beyond the inference necessarily arising from some positive inconsistency in the substance of the law. When any two provisions are repugnant, undoubtedly the former is displaced, and must be overruled to the extent of the inconsistency, but no further. These views are sustained by the highest judicial authority. (*Wood vs. United States*, 16 Pet., 362, 363; *Dwarris*, 675; 1 *Kent's Com.*, 466, note.) A slight examination will be sufficient to enable any one to perceive that there is no inconsistency in the two provisions under consideration, in their application to this case. If Congress had adopted the law of 1844 instead of the law of 1841, the effect would have been the same—to withhold the pension from the applicant for and during the period he shall have received his pay as an officer in the service.

I am therefore of opinion that Lieutenant Brownell is not by law to receive his pension while on duty, and in the receipt of his pay as an officer of the navy. The answer to

the second question must also be in the negative. In contemplation of this act he is an officer in the service while in receipt of the pay allowed to his grade, whether on duty or waiting orders.

NATHAN CLIFFORD.

To the SECRETARY OF THE NAVY.

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"PENSIONS TO OFFICERS RECEIVING REGULAR PAY—The Attorney General reconsiders his opinion of the 24th ultimo, and advises that no officer can receive at the same time pay as an officer on duty and as a pensioner.

"That officers who may be waiting orders, or on leave or furlough, can receive on account of their pensions only so much as, when added to their pay when on leave, &c., will amount to the pay of their grade when on duty."

ATTORNEY GENERAL'S OFFICE, *June 2, 1847.*

SIR: I have had the honor to receive your communication of the 1st instant, transmitting House document No. 95, containing the opinion given by Mr. Badger while he was Secretary of the Navy, and directing my attention to the rule of construction which he placed upon the act of the 16th of August, 1841. It must be conceded that the opinion of that officer is opposed to the views expressed by me in my answer of the 24th ultimo to the second inquiry in the case of Lieutenant Brownell. Notwithstanding, if the question were now presented to me in the aspect of the first communication from the department, as one of new impression, dependent upon the language of the original act, and entirely disembarassed of any legislative interpretation, I would feel constrained to adhere to the rule which I there laid down, that every officer holding a commission in the navy, whether "on duty" or "waiting orders," while in the receipt of the regular compensation allowed by law to his grade, is in the service of the United States, within the true intent and meaning of the limitation contained in the second section of that act. It must, however, be admitted that the section is inartificially drawn, and not free from ambiguity. On the contrary, it is manifest that the phrase under consideration presented, in the outset, a question of construction involving considerable difficulty and doubt. Every such question may be decided by the department, without the aid of advice. It now appears that Mr. Badger gave his views upon the point within four days after the passage of the law, and that his opinion was published in the *National Intelligencer*, October 7, 1841, and subsequently by the order of the House of Representatives. The rule thus established, it seems, has received the sanction of the department to the present time. In the meanwhile, the substance of this provision has been re-enacted by Congress in

the act of the 30th of April, 1844, preserving the identical expression, without any alteration to affect the present question, and is again re-affirmed in the special case of Mr. Brownell.

No one, therefore, can fail to perceive that the opinion of Mr. Badger is entitled to very great weight, even beyond the intrinsic merit of the reasoning upon which it is based. The following is an extract from that opinion :

"The phrase 'in service' seems to have been used instead of, and as equivalent to, 'on duty,' for, in any other sense, the whole section becomes unmeaning, as every officer, while he continues to belong to the navy, is in the service, though he may not be on duty. Giving this sense to the phrase, I am of opinion—

"First, that no officer can receive at the same time pay as an officer on duty and as a pensioner ; and,

"Secondly, that officers who may be 'waiting orders,' or 'on leave,' or 'furlough,' can receive only so much on account of their pensions as, added to their pay when so 'on leave,' etc., will amount to the pay of their grade when 'on duty.'"

That opinion was given on the 20th of August, 1841, and has constituted one of the general regulations of the Pension Office ever since. The intention of Congress should govern the case. It therefore becomes important to ascertain in what sense the language "in service" was employed or recognized in the subsequent acts. The act granting the pension was passed February 18, 1847. It contains no language to overrule the long established practice of the department, while it expressly adopts and recognizes the law upon which it is founded. Whatever doubt, therefore, may exist in my mind as to the soundness of the rule at the time of its promulgation, if it had been originally established by a judicial determination, I should hold that Congress had ratified the interpretation by subsequently re-enacting the phrase upon which it had been made. No rule of construction is better established or more frequently applied. It is thus stated in Bacon's Abridgment: "Words and phrases, the meaning of which in a statute has been ascertained, when used in a subsequent statute are to be understood in the same sense." Few exceptions exist to this rule when the words are applied to the same subject-matter. (7 Bacon, stat. 1, 451.)

I deem it unnecessary to refer to other authorities which might be cited in support to the position. It will not do, however, to admit that the decision of an executive depart-

ment can have the same force and effect as a judicial determination. But where there has been an uninterrupted usage of several years, as in this case, founded upon an official opinion, and coupled with a strong implication of legislative sanction, it might be unsafe to overrule the practice without the sanction of Congress.

Under all the circumstances, as they are now disclosed, I see no occasion to recommend any change in the practice of the department. It is better to follow the rule established by Mr. Badger, unless Congress shall see fit to interfere.

NATHAN CLIFFORD.

JOHN APPLETON, Esq.,

*Acting Secretary of the Navy.*

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AN ACT renewing certain naval pensions, etc.

APPROVED, AUGUST 11, 1843.

SEC. 1. [in part.] "That the act approved April 30, 1844, shall not be so construed as to exclude officers, seamen, or marines from their pensions when disabled for sea service: *Provided*, That the whole amount received by the pensioner, including pay for his service and pension, shall not exceed his lowest duty pay."

OFFICE OF THE ATTORNEY GENERAL, *August 28, 1843.*

SIR: The application of Mrs. Evelina Porter, referred to this office for my opinion by your communication of the 15th instant, is based upon the following facts: Commodore David Porter, her husband, in 1838, made application for a pension for a disability incurred in 1803, which was allowed by the proper department, at the rate of forty dollars per month, to take effect from the 24th day of January, 1823, when he retired from service in the navy of the United States. In February, 1839, he made a second application, claiming his arrears of pension from 1803, under the provisions of the act of the 3d of March, 1837. Mr. Paulding, then the Secretary of the Navy, by his letter to the commodore, under date of the twelfth of February, 1839, is shown to have entertained this demand; and to have decided, that there was due to him, under the act of 1837, a pension at the rate of twelve dollars and fifty cents per month from 1803, when his disability was incurred, to the 24th of January, 1825, when his allowance, upon the application of 1838, commenced. The sum thus ascertained to be due was not paid to the commodore during his lifetime, and Mrs. Porter now claims it, as properly payable to her for the benefit of herself and daughters; and the question propounded for my opinion is, "whether, un-

der the circumstances above stated, Mrs. Porter is entitled to said arrears of pension from 1803 to 1825?"

The acts of Congress more especially affecting this case, are those of 1800, ch. 33, sec. 8, and 1837, ch. 406, sec. 2. Their provisions seem to me to be clear and unambiguous, and, having been acted on in reference to this particular case by the competent authority, undoubtedly embrace the present claim. The decision of Mr. Secretary Paulding, upon the application of Commodore Porter, is in the nature of a judgment rendered by a tribunal of competent *jurisdiction*, which settled the rights of the claimant, and put him upon the footing of an acknowledged creditor, to an ascertained amount, of the government. As such creditor he might at any time during his life have demanded payment, which would not and could not rightfully have been refused him. The fact of his forbearance of that demand does not, I think, extinguish this debt; but it remains due, and can be discharged only by payment to his legal representatives. I have said legal representatives, because Mrs. Porter, *qua* his widow, has no claim on this fund. In the view I have taken of this case, the sum due is in the precise predicament of any other money to which the commodore at the period of his death was entitled. It is so much money in the hands of the government to his credit, which belongs since his death, to his executor, if he has left a will, or to his administrator, if he has died intestate.

With the disposition of the fund the government has nothing to do; that is a matter within the control of the local tribunals charged with the settlement of his estate; the whole extent of the duty and responsibility of the government being to pay over the amount in its keeping to those who represent the deceased, to whom it belonged.

In expressing this opinion of the validity of this claim, I by no means design to disturb any usage that has obtained in the Pension Office, which, independently of the respectable authority under whose sanction it has been established, is entitled to the highest consideration, because it is usage: it being of the first importance in the administration of the government, as far as it operates upon the pecuniary rights of the citizen, that its rule of action should be uniform. I intend only to say that this case, under its particular circumstances, is covered by the express provisions of the law, and is fortified by the clearest equity.

The papers are returned.

JOHN NELSON.

To the SECRETARY OF THE NAVY.



## FORM OF APPLICATION FOR NAVY INVALID PENSION.

*To the Commissioners of Pensions:*

The memorial of the undersigned, ....., who was a.....in the United States naval service, respectfully sheweth :—

That your memorialist was born at....., in the State of.....; is..... years of age, ..... feet ..... inches high; ..... complexion, ..... eyes, ..... hair.

That he entered the United States naval service at ....., on ....., and while attached to ..... and holding the rank of....

....., he was disabled by ..... That the same was incurred by him in the performance of his duty; and having thereby been disqualified for the naval service, and disabled from obtaining his subsistence by manual labor, he refers to the evidence filed ..... and claims the benefit of the laws granting navy pension ....., and that his pension may be made payable at the navy pension agency in.....

In the presence of } .....  
 SWORN AND SUBSCRIBED TO, before me, this.....day of ....., A.D., 18...  
 ..... J. P.

STATE OF..... }  
 COUNTY OF..... } ss.  
 TOWN OF..... }

On this ..... day of ....., A.D. 18..., before me, the subscriber, a ..... in and for said county, duly authorized to administer oaths, personally came....., aged..... years, and....., aged..... years, whom I know to be residents of the County and State aforesaid, and persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw ..... execute the foregoing affidavit by..... to the foregoing declaration, and making oath thereto in due form of law, and they further swear that they are acquainted with the said....., now present, and have every reason to believe from the appearance of the applicant, that he is the identical person he represents himself to be; and further, that they, deponents, do reside in the county aforesaid.

WITNESS, .....

SWORN TO AND SUBSCRIBED before me, this.....day of ....., A.D. 18..., and I further certify that I am not interested as agent or attorney in the case.  
 ..... J. P.

STATE OF..... }  
 COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esq., before whom the foregoing declaration and power of attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of.....Court, for the county aforesaid, this.....day of ....., 185..

.....  
 Clerk of.....

## APPLICATION FOR INCREASE OF NAVY INVALID PENSIONS.

STATE OF..... }  
 COUNTY OF..... } ss.

On this.....day of ....., 18..., before me, ....., a....., personally appeared, ....., a resident of ....., who being duly sworn, declareth that he is the same person in whose favor a certificate of pen-

sion was issued on the..... day of ....., 18., under the signature and seal of the Secretary of the Interior, at the rate of ..... dollars ..... cents per month, from the ..... day ....., 18., and which pension has been paid him to the ..... day of ....., 18., inclusive, at the Navy Pension Agency.

That the disability for which the said pension was allowed was caused by ... in the line of his duty, while attached to the United States ....., and holding the rank of ....., in the year 18., and was graduated for ..... disability from manual labor; but that such disability having since increased, the said ....., for the purpose of obtaining a corresponding increase of his pension, requests that a Board of Survey may be ordered in his case, to be held at the United States Naval Station at .....

**SWORN AND SUBSCRIBED** to before me, the day and year aforesaid.

..... J. P.

The affidavit of two credible witnesses, as to the identity of the claimant, and the certificate of the clerk of a Court of Record as to the official character of the Justice before whom the declaration is made, is necessary. See preceding form of application for a navy invalid pension.

### MARINES OF THE MEXICAN WAR.

Joint resolutions concerning certain portions of the marine and ordnance corps.

APPROVED, AUGUST 10, 1848.

1. *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the officers, non-commissioned officers, privates, and musicians, of the marine corps, who have served with the army in the war with Mexico, and also the artificers and laborers of the ordnance corps serving in said war, be placed, in all respects as to bounty land and other remuneration, in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates, and musicians of the army: *Provided*, That this remuneration shall be in lieu of prize-money and all other extra allowance.

ATTORNEY GENERAL'S OFFICE, Nov. 21, 1848.

SIR: I have the honor to reply to your letter of the 10th instant, requesting my opinion in the case of James Orr, a sergeant in the marine corps, who was severely wounded at the storming of Chapultepec, in September, 1847. The question is, whether he is entitled to a pension as a sergeant of the marines, under the act of 23d April, 1800, or as a sergeant in the army, under the act of the 26th of April, 1816. In the former case, his pension would be six dollars and fifty cents per month; in the latter, eight dollars per month.

The whole question turns upon the construction of the joint resolution of August 10, 1848, which places those of

the marine corps who served with the army in the war with Mexico, "in all respects, as to bounty land and other remuneration in addition to ordinary pay, on a footing with the officers, non-commissioned officers, privates, and musicians of the army."

What is comprehended within the words "other remuneration?" It does not mean ordinary pay, because it is in addition to ordinary pay. It does not mean clothing or rations, for they were the same in both branches of the service. It does not mean "bounty land," for that is expressly named, and then these words are added, meaning remuneration other than bounty land, but, according to the legal rule of construction, of a like nature with it. Bounty land is not strictly remuneration, like pay or emoluments, but a benefit secured by law for the advancement of the service. A pension to a soldier disabled by wounds in battle is a similar benefit, secured by law for a like object; and it is looked to by the soldier, when he engages, as being, in a more broad and general sense, a part of the remuneration which his country promises to secure to him for his services in her cause.

The act of 1816 declares that non-commissioned officers shall be "entitled" to receive, for disabilities of the highest degree, "eight dollars per month"—that is, very clearly, as a remuneration for such disabilities. This would seem to have been the comprehensive meaning attached to the words "other remuneration," when Congress made use of them. If they have not this meaning, then they have no meaning at all; for there is no other subject-matter to which they can apply, and they must be expunged, as having been used by the Legislature without an object. Besides all this, it was the general intention of Congress to place these classes in all respects upon the same footing; and there is neither reason nor justice, after such a Legislative declaration, in making an invidious distinction between two men in the same relative position, who have been disabled, by the loss of their limbs, fighting side by side in the same service. Such was not the intention of Congress.

ISAAC TOUCEY.

To the SECRETARY OF THE NAVY.

# HALF-PAY TO WIDOWS AND ORPHANS.

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ACT OF JANUARY 20, 1813.

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AN ACT providing navy pensions in certain cases.

**SEC. 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any officer of the navy or marines shall be killed or die, by reason of a wound received in the line of his duty, leaving a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, which allowances shall continue for and during the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half-pay for the remainder shall go to the child or children of the said deceased officer: *Provided,* That such half-pay shall cease on the death of such child or children; and the money required for this purpose shall be paid out of the navy pension fund, under the direction of the commissioners of that fund.

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AN ACT extending the term of half-pay pensions to the widows and children of certain officers, seamen, and marines, who died in the public service.

APPROVED, MARCH 3, 1819.

**SEC. 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for five years' half-pay to the widows and children of officers, seamen, and marines, who were killed in battle, or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years, in each case, respectively, making the provision equal to ten years' half-pay; which shall be paid in the manner, and out of the

fund, heretofore designated by law ; and the said pensions shall also cease for the reasons mentioned in the said law.

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AN ACT further extending the term of half-pay pensions to the widows and children of officers, seamen, and marines, who died in the public service.

APPROVED, JANUARY 22, 1824.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* in all cases where provision has been made by law for five years' half-pay to the widows and children of officers, seamen, and marines who were killed in battle, and who died in the naval service of the United States, during the late war ; and, also, in all cases where provision has been made for extending the term for five years, in addition to the first term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the second term of five years, in each case, respectively, making the provision equal to fifteen years' half-pay ; which shall be paid out of the fund heretofore provided by law ; and the said pensions shall cease, for the causes mentioned in the laws providing the same, respectively.

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AN ACT to provide for extending the term of certain pensions, chargeable on the Navy and Privateer Pension Fund.

APPROVED, MAY 23, 1828.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* in all cases where provision has been made by law for the five years' half-pay to the widows and children of officers, seamen, and marines who were killed in battle, or who died in the naval service of the United States during the last war ; and also in all cases where provision has been made for extending the term for five years in addition to any term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the current or last expired term of five years in each case, respectively ; making the provision equal to twenty years' half-pay ; which shall be paid out of the fund heretofore provided by law, and the said pensions shall cease for the causes mentioned in the laws providing the same, respectively.

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AN ACT further to extend the pensions heretofore granted to the widows (*only*) of persons killed or who died in the naval service.

APPROVED, JUNE 28, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That*

in all cases where provision has been made by law for the five years' half-pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States; and, also, in all cases where provision has been made for extending the term for five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only, to commence at the end of the current or last expired term of five years in each case, respectively; which pension shall be paid out of the fund heretofore provided by law. And the pension herein continued shall cease for the causes mentioned in the laws granting the same, respectively.

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AN ACT concerning naval pensions, and the Navy Pension Fund.

APPROVED, JUNE 30, 1834.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same; and the same are hereby also extended to the widows of officers, seamen, and marines, who have died in the naval service since the first day of January, one thousand eight hundred and twenty-four, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty; and the pensions of such widows shall commence from the passage of this act: *Provided*, That every pension hereby granted shall cease on the death or marriage of such widow.

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AN ACT renewing certain naval pensions for the term of five years.

APPROVED, MARCH 3, 1845.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the pensions for the period of five years, which have been heretofore granted out of the Naval Pension Fund, to the widows of officers, seamen, and marines, who have been killed, or died by reason of a wound received in the line of their duty, or who have died by occasion of disease contracted, or of a casualty by drowning or otherwise, or of in-

jury received while in the line of their duty, and which pensions have ceased in consequence of the expiration of the period for which they were originally granted, or for which they were subsequently renewed, shall be continued for another period of five years, to such of the said widows as have remained unmarried; to commence from the day on which such pensions, respectively, terminated; and to be paid out of any money in the Treasury not otherwise appropriated: *Provided*, That every pension hereby renewed shall cease on the death or intermarriage of the widow to whom the same is hereby granted.

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AN ACT making appropriations for the payment of navy pensions for the year ending thirtieth June, eighteen hundred and forty-eight.

APPROVED, MARCH 3, 1847.

SEC. 2. *And be it further enacted*, That the provisions of the act of 1845, chapter 41, entitled "An act renewing certain naval pensions for the term of five years," be, and the same are hereby, extended to all pensions of similar kind which have expired since the passage of said act; and the pensions which were renewed by the said act for the term of five years, and which may expire before the next session of Congress, shall be, and hereby are renewed and continued for another term of five years, to the persons entitled thereto, in the same manner, and subject to the same conditions, as are in the said act contained, and to commence from the time they may severally expire, and to be paid out of any money in the Treasury not otherwise appropriated.

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AN ACT renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers in the navy, and to their widows and orphans.

APPROVED, AUGUST 11, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all those widows and such child or children, as are now receiving a pension under any of the laws of Congress passed prior to the first of August, eighteen hundred and forty-one, (excepting the law passed the third of March, eighteen hundred and thirty-seven,) and those widows and children who have received pensions at any time within five years prior to the passage of this act, may and shall continue to receive the same amount as they have received under any special act, from the time such special act expired: *Provided*, Such act ceased on or after the first day of September, eighteen hundred and forty-five, or may hereafter terminate. And all

such pensions as are now in force, and such as are now renewed by this act, shall be paid out of any money in the Treasury not otherwise appropriated, so long as the said widows shall live as widows; and in case of the death, before or after the passage of this act, of the widows, to the orphan child or children of the deceased parties, until they respectively arrive at the age of sixteen years; and to the child or children of said widows in case of marriage by said widows, until said child or children shall respectively arrive at the age of sixteen years. \* \* \* That the orphan child or children of the deceased parties shall have a pension in case the widow has died after receiving a five years' pension, to commence at the time when the widow dies, and to continue until the child or children shall respectively reach the age of sixteen years. \* \* \*

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AN ACT giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States.

APPROVED, MARCH 4, 1814.

SEC. 2. *And be it further enacted*, That if any seaman or marine belonging to the navy of the United States shall die, or if any officer, seaman, or marine, belonging to the navy of the United States shall have died, since the eighteenth day of June, in the year of our Lord one thousand eight hundred and twelve, by reason of a wound received in the line of his duty, leaving a widow, or, if no widow, a child or children, under sixteen years of age, such widow, or, if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled at the time of his death, which allowance shall continue for the term of five years; but in case of the death or intermarriage of such widow, before the expiration of the said term of five years, the half-pay, for the remainder of the term, shall go to the child or children of the deceased: *Provided*, That such half-pay shall cease on the death of such child or children. And the money required for this purpose shall be paid out of the Navy Pension Fund, under the direction of the Commissioners of that fund.

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AN ACT in addition to "An act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States.

APPROVED, APRIL 18, 1818.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in every case where a person has been put on the pension list, or granted a certificate of pension, by virtue of the first



section of an act passed the fourth day of March, in the year eighteen hundred and fourteen, entitled "An act giving pensions to the orphans and widows of persons slain in the public or private armed vessels of the United States," the Secretary of the Navy be, and he is hereby authorized, at the expiration of the term of five years, for which any pension certificate shall have been granted as aforesaid, to allow the full monthly pension to which the rank of the deceased would have entitled him for the highest rate of disability, and that such pension shall continue to such person for the further term of five years: *Provided*, That such pension shall cease on the death of such widow, child or children.

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AN ACT extending the term of half-pay pensions to the widows and children of certain officers, seamen, and marines, who died in the public service.

APPROVED, MARCH 3, 1819.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where provision has been made by law for five years' half-pay to the widows and children of officers, seamen, and marines, who were killed in battle or died of wounds received in battle, or who died in the naval service of the United States, during the late war, the said provision shall be continued for the additional term of five years, to commence at the end of the first term of five years, in each case respectively, making the provision equal to ten years' half-pay; which shall be paid in the manner, and out of the fund, heretofore designated by law; and the said pensions shall also cease for the reasons mentioned in the said law.

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AN ACT further extending the term of half-pay pensions to the widows and children of officers, seamen, and marines, who died in the public service.

APPROVED, JANUARY 22, 1821.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where provision has been made by law for five years' half-pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States, during the late war; and, also, in all cases where provision has been made for extending the term for five years, in addition to the first term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the second term of five years, in each case respectively, making the provision equal to fifteen years' half-pay; which shall be paid out of the fund heretofore provided by law; and the

said pensions shall cease for the causes mentioned in the laws providing the same, respectively.

AN ACT to provide for extending the term of certain pensions, chargeable on the Navy and Privateer Pension Fund.

APPROVED, MAY 23, 1823.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases where provision has been made by law for the five years half-pay to the widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States during the last war; and also in all cases where provision has been made for extending the term for five years in addition to any term of five years, the said provision shall be further extended for an additional term of five years, to commence at the end of the current or last expired term of five years in each case respectively; making the provision equal to twenty years' half-pay; which shall be paid out of the fund heretofore provided by law, and the said pensions shall cease for the causes mentioned in the laws providing the same, respectively.

AN ACT for the more equitable administration of the navy pension fund.

APPROVED, MARCH 3, 1837.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That if any officer, seaman, or marine, have died, or may hereafter die, in the naval service, leaving a widow, and, if no widow, a child or children, such widow, and if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased would have been entitled, under the acts regulating the pay of the navy, in force on the first day of January, one thousand eight hundred and thirty-five, to commence from the time of the death of such officer, seaman, or marine; but in case of the death or intermarriage of such widow, the half-pay shall go to the child or children of deceased officer, seaman, or marine: *Provided,* That the half-pay granted to the child or children shall cease on their death, or on their attaining the age of twenty-one years.

AN ACT to provide for the payment of navy pensions.

APPROVED, AUGUST 18, 1841.

SEC. 1. \* \* \* \* \* *Provided,* That all widows or children of all naval officers, seamen, or marines, now deceased, and en-

titled to receive or make proof of their pensions under the act of the third of March, eighteen hundred and thirty-seven, shall receive the same until the close of the next session of Congress; but no widow or children of any naval officer, seaman, or marine, who may hereafter die, shall be entitled to any pension by virtue only of any provision in the said act.

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AN ACT renewing certain naval pensions, and extending the benefits of existing laws, respecting naval pensions, to engineers, firemen, and coal-heavers in the navy, and to their widows.

APPROVED, AUGUST 11, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* all those widows and such child or children as are now receiving a pension under any of the laws of Congress passed prior to the first of August, eighteen hundred and forty-one, (excepting the law passed the third of March, eighteen hundred and thirty-seven,) and those widows and children who have received pensions at any time within five years prior to the passage of this act, may and shall continue to receive the same amount as they have received under any special act, from the time such special act expired: *Provided*, Such act ceased on or after the first day of September, eighteen hundred and forty-five, or may hereafter terminate. And all such pensions as are now in force, and such as are now renewed by this act, shall be paid out of any money in the treasury not otherwise appropriated, so long as the said widows shall live as widows; and in case of the death, before or after the passage of this act, of the widows, to the orphan child or children of the deceased parties, until they respectively arrive at the age of sixteen years; and to the child or children of said widows in case of marriage by said widows, until said child or children shall respectively arrive at the age of sixteen years; and that the act approved thirtieth April, eighteen hundred and forty-four, shall not be so construed as to exclude officers, seamen, or marines, from their pensions, when disabled for sea service: *Provided*, That the whole amount received by the pensioner, including pay for his service and pension, shall not exceed his lowest duty pay. That the orphan child or children of the deceased parties shall have a pension in case the widow has died after drawing a five years' pension, to commence at the time when the widow dies, and to continue until the child or children shall respectively reach the age of sixteen years; and that any casualty by which an officer, seaman, or marine, has lost or may lose his life while in the line of his duty,

shall be considered sufficient to entitle the widow, child, or children, to all the benefits of this act.

SEC. 2. *And be it further enacted*, That engineers, firemen, and coal-heavers, in the navy, shall be entitled to pensions in the same manner as officers, seamen, and marines; and the widows of engineers, coal-heavers, and firemen, in the same manner as the widows of officers, seamen, and marines: *Provided*, That the pension of a chief engineer shall be the same as that of a lieutenant in the navy; and a pension of the widow of a chief engineer the same as that of the widow of a lieutenant in the navy; the pension of a first assistant engineer the same as that of a lieutenant of marines; and the pension of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines; the pension of a second or third assistant engineer the same as that of a forward officer; and the pension of the widow of a second or third assistant engineer the same as that of the widow of a forward officer; the pension of a fireman or coal-heaver the same as that of a seaman; the pension of the widow of a fireman or coal-heaver the same as that of the widow of a seaman: *And provided further*, That an engineer, fireman, or coal-heaver, shall not be entitled to any pension by reason of a disability incurred prior to the thirty-first of August, eighteen hundred and forty-two, nor shall the widow of an engineer, fireman, or coal-heaver, be entitled to any pension by reason of the death of her husband, if his death was prior to the said date.

SEC. 3. *And be it further enacted*, That the amount of pension in every case arising under this law [is] not to exceed the half-pay of the deceased officer, seaman, or marine, as it existed in January, eighteen hundred and thirty-five, or such rate of pension as is allowed by this act.

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AN ACT further to extend the pensions heretofore granted to the widows of persons killed, or who died in the naval service.

APPROVED, JUNE 28, 1832.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That in all cases where provision has been made by law, for the five years' half-pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States; and, also, in all cases where provision has been made for extending the term for five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only, to

commence at the end of the current or last expired term of five years in each case, respectively ; which pension shall be paid out of the fund heretofore provided by law. And the pension herein continued shall cease for the causes mentioned in the laws granting the same, respectively.

SEC. 2. *And be it further enacted*, That the provisions of this act shall be extended to the widows of all those who may have died by reason of wounds received during the war.

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AN ACT concerning naval pensions, and the Navy Pension Fund.

APPROVED, JUNE 30, 1834.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same.

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AN ACT concerning naval pensions, and the Navy Pension Fund.

APPROVED JUNE 30, 1834.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all the provisions and benefits of the act of the twenty-eighth of June, one thousand eight hundred and thirty-two, entitled "An act further to extend the pension heretofore granted to the widows of persons killed, and who have died in the naval service," be continued for another term of five years to all those widows who have heretofore had the benefit of the same ; and the same are hereby also extended to the widows of officers, seamen, and marines, who have died in the naval service since the first day of January, one thousand eight hundred and twenty-four, or who may die in said service by reason of disease contracted, or of casualties by drowning or otherwise, or of injuries received while in the line of their duty ; and the pensions of such widows shall commence from the passage of this act : *Provided*, That every pension hereby granted shall cease on the death or marriage of such widow.

Opinions and Decisions relative to the preceding acts granting Pensions to Widows and Orphans.

NAVY, MARINE CORPS AND PRIVATEERS.

Error committed in allowing a pension by official decision, or advisory opinion of Attorney General, does not render the recipient of the allowance a debtor to the government.

ATTORNEY GENERAL'S OFFICE, *October 24, 1832.*

SIR: It appears from the papers before me that John M. Gardner, who was a master commandant in the navy of the United States, died shortly after the close of the war, of a disease contracted during the war; and that his widow, Sophia Gardner, was placed on the pension list by the commissioners of the navy pension fund, under the act of 1817. Under this law she was clearly entitled to the pension. Her certificate was afterwards renewed, and the pension continued to her under the acts of 1819 and 1824. The act of 1823, which continued the navy pensions for five years longer, gives pensions to the widows of persons who were killed in battle, or died in service, "during the last war;" and under this act it was decided by the commissioners of the navy fund that the case of Mrs. Gardner was not embraced by its provisions, and she was dropped from the roll. The language of the acts of 1819 and 1824 before mentioned, is the same in effect with that of 1828 in this respect, and gives the pension to those who were killed in battle, or died in service, "during the last war." And if the construction placed on the act of 1828 was the true one, then the pension of Mrs. Gardner ought not to have been continued under the acts of 1819 and 1824.

It is unnecessary in this case to decide whether the construction given to the act of 1828 was the true one or not. I find, on examination, that Mr. Wirt and Mr. Berrien differed in opinion on this point. But, assuming that the opinion given by Mr. Wirt is the correct interpretation of the law, and that the pension of Mrs. Gardner ought not to have been continued under the acts of 1819 and 1824, it does not follow that she is to be regarded as a debtor to the government for the amount received under these two acts. On the contrary, I think that, inasmuch as the tribunal to whom the construction of these laws was confided by the government decided that Mrs. Gardner was embraced by their provisions, and the pension was paid to her under that decision, she is entitled to hold the money. The interpretation then given by the competent authority having jurisdiction of the subject cannot now be revised or reversed by their succes-

sors in the same office, so as to affect the rights of those who have received pensions, although the construction then given should now be deemed erroneous. The case would be different if any mistake of fact had been committed, or the government imposed on by false testimony.

The act of the last session of Congress in relation to these pensions, conforms in its language to the act of 1817; and Mrs. Gardner is entitled to a pension under this law. Being so entitled, she has, in my opinion, the right to receive her pension; and the money which was paid to her under the laws of 1819 and 1824 cannot be set-off against it. She is not debtor to the public for what she has before received under the decision of the tribunal established by the government to decide on her rights; and that sum cannot, therefore, be retained as a set-off against the money which, under the late law, is due to her from the public.

R. B. TANEY.

To the SECRETARY OF THE NAVY.

The widow of an officer, or seaman, etc., serving on board of a private armed vessel, who shall have died of wounds received in the line of his duty, shall be entitled to a pension for the term of five years, at the rate of half the monthly pay to which the rank of the deceased entitled him to; and if such widow should not have claimed or received such pension for the term of the first five years, or for any number of continuations of such periods of five years, she shall be entitled to receive the arrearages for each term of five years, only to cease at her death or intermarriage, but to endure to herself and after her intermarriage, or to her legal representatives after her death.

OFFICE OF THE ATTORNEY GENERAL, June 9, 1825.

SIR: The case and question submitted for my opinion are the following: "During the late war a person lost his life on board a private armed vessel, while acting in the line of his duty, leaving a widow, and children under the age of sixteen years. By the acts of Congress on the subject of pensions, the widow was entitled to a monthly allowance from the privateer pension fund. She omitted, however preferring any claim for several years; but now, having intermarried, she has applied for the pension on behalf of the children, some of whom are yet under the age of sixteen years, and also for the portion of pension to which she was entitled during her widowhood.

"*Question.*—Is the applicant, having ceased to be the widow, legally entitled to receive a pension for the interval between the death of her former husband and her second marriage?"

*Answer.*—The provision of the law is, "that if any officer, seaman, etc., serving on board of any private armed vessel, etc., shall have died by reason of a wound received in the

line of his duty, leaving a widow, etc., such widow shall be placed on the pension list by the Secretary of the Navy, who shall allow to such widow half the monthly pension to which the rank of the deceased would have entitled him, etc.; which allowance shall continue for the term of five years: but in case of the death or intermarriage of such widow before the expiration of the term of five years, the half-pay for the remainder of the term shall go to the child or children of the deceased."

Here is a certain right which the law says shall accrue to the widow on the happening of a certain event—that of her husband having died by the reason of a wound received in the line of his duty either on board of a private armed vessel. The law does not require either that an application should be made by her, or that any thing else should be done in order to consummate her right. It is consummated by the mere fact of the death of her husband under the circumstances already mentioned. It is a vested right to so much money *per annum*, for five years, subject, however, to be discontinued and defeated by her death or marriage at any time within that term, but a vested and perfect right during the time that she continues to live the widow of her deceased husband; and not defeated by her subsequent intermarriage, except from the time at which such intermarriage takes place.

Such I understand to have been the uniform practice under this act, ever since its adoption; and I confess that I see no reason for changing the practice. There would have been more doubt under the act of April 16th, 1818, providing "that in every case where a person *has been put on the pension list, or granted a certificate of pension,*" under the former act, the Secretary of the Navy is authorized to allow the *full monthly pension*, instead of *the half*, for five years more, counting from the end of the former term; and under the act of April 9th, 1824, providing "that the pensions of all persons *who now are in the receipt thereof,*" under the provisions of the former laws, shall be continued for five years more, notwithstanding the explanation given to the latter act by the act of May 26th, of the same year. But I understand that if a widow, whose rights commenced under the act of 1814, *now, for the first time,* makes an application for her pension under all the past acts, no difficulty arises to her now receiving all that those acts give her, provided that she still remains a widow of the deceased. I understand, also, that even where she has since intermarried before she has made any application, or has died before she has made any application, the uniform practice of



the department has been not to consider the application too late for all that was due at the time of her intermarriage or death; the department having, heretofore, considered that as having been done which ought to have been done. It is a liberal exposition of these acts, in advancement of the public policy on which they are founded, and I see no sufficient cause to disturb it by recommending a change. And, indeed, I cannot conceive with what consistency a widow can be permitted now to draw a pension from the year 1812 to the present moment, provided that she still remains the widow; but that half an hour hence, in which time the ceremony of her second marriage has been performed, she forfeits all that right. The law annexes no such forfeiture to her second marriage; it only stops the pension *from the time of her second marriage*. If the objection be, that the pension is designed for her *present* support; and that the necessity for this support is supposed to exist only for the period during her widowhood;—the answer is, that it is only for the period during her widowhood that the demand is made; and inasmuch as the law supposes the necessity to subsist so long as the widowhood subsists, and attaches no other effect to the second marriage than to terminate that necessity, prospectively, from that period, it seems to me to pass the sphere of mere construction to give to this second marriage a retrospective effect and to make it extinguish, *ex post facto*, the past necessity. If the non-claim during the widowhood is interpreted as admitting that, there was no necessity for the pension during those long past years which the pension was required to supply, and thus take her case out of the law too. But this necessity is *assumed* as one of the requisites for the application of the law. The right of pension does not at all depend on that necessity. It is given to the widows and children of officers and men, of rich and poor, without regard to their circumstances. It is in the nature of an absolute engagement or promise made to those officers and men, that if they fall in the service of their country, so much shall be paid to their wives and children, without inquiry into the fact whether they stand in need of it or not. Nor is there any condition annexed to the promise that the money shall be paid, *if applied for in a given time, or in a given state of things*. It is bottomed only on the single condition that the husband and father shall die in the service of his country; on the happening of which condition, the public engagement becomes a *debt*, which is as much *property*, and the property of the widow and children, as any bonds which the deceased may have left to them by his will. I am of opinion that the

practice is right, and ought not to be disturbed; and have the honor to remain, very respectfully, your obedient servant,  
WM. WIRT.

To the SECRETARY OF THE NAVY.

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The following opinion adopts that of Mr. Wirt, of the 9th June, 1825, in relation to widows of officers and seamen of the privateer service, and applies it, with scarcely a variation, to widows of officers, seamen, etc., of the navy.

ATTORNEY GENERAL'S OFFICE, *April 5, 1836.*

SIR: In your letter of the 10th of February last, you state that on the 18th of May, 1815, Benjamin White, master-at-arms in the navy of the United States, died in consequence of a fall through the hatchway of the United States ship Ontario, leaving a widow, who now for the first time claims a pension. I infer from your letter, (though the facts are not distinctly stated,) that Mr. White was killed in the line of his duty, and also that Mrs. White has not been married since her husband's death.

After referring me to various acts of Congress applicable to the subject, you request me to inform you "whether, in my opinion, the benefits of these laws ought to be now extended to Mrs. White; and if not, whether she is entitled to any pension; and if entitled, at what time the pension should commence, and for what period should it be allowed?"

The acts of Congress in relation to navy pensions are so numerous and intricate, that I have found it a task of no little labor and difficulty to extract from them a satisfactory reply to your queries; especially as I find, on a careful examination of the records of this office, that many of their provisions have, from time to time, been referred to this office for construction, and that, on several of those occasions, the decision appears to have been founded rather on the usage of your department than on the language of the Legislature.

To secure uniformity of judgment, and conform, as far as I can, to the practice which has heretofore obtained in analogous cases, I shall take up the case of Mrs. White at the date of her husband's death, and, by the aid of the decisions made by my predecessors, endeavor to dispose of it in accordance with the principle of those decisions.

On the 18th of May, 1815, the only laws applicable to the subject were the acts of the 13th of February, 1813, and the 4th of March, 1814.

According to the construction given to the act of 1813 by

the Attorney General, in his opinion of the 31st of March 1825, it embraces every case of an *officer killed in the line of his duty*, whether killed in battle or by *casualties*; and the case of Benjamin White was therefore within it, provided he is to be considered as an *officer*—for the act does not extend to seamen. I am by no means certain that a *master-at-arms* is an *officer of the navy*, within the meaning of the act of the 20th January, 1813. In the acts of Congress then in force, he was called and treated as a *petty officer*, as contradistinguishing him from *seaman*. I am, therefore, inclined to think he was a *officer* within the act of 1813, and that his widow was, accordingly, entitled to the benefits of that law; but, as this is a question which belongs rather to the naval service than to this office, I shall not express a positive opinion thereon.

If the act of February, 1813, did not embrace this case, then Mrs. White, at the time of her husband's death, was not entitled to any pension; because the act of the 4th of March 1814, as expounded in the above-cited opinion, was confined to persons *slain* by wounds; and so far as *officers* are concerned its provisions were entirely retrospective—covering those cases, and those only, in which officers *had* been *slain* in the line of their duty, between the 18th of July, 1812, and the date of the law.

According to the construction thus given to these two acts, White, if an *officer*, was embraced in the act of 1813; and not in that of 1814; but, if not an officer, he was not embraced in either; not in the act of 1813, because that act was confined to *officers*; and not in that of 1814, because that act was confined to persons *slain*, and did not extend to deaths by casualties.

But it is to be observed, that the act of the 4th of March 1814, was subsequently extended, by the amendatory act of the 3d of March, 1817, so as to include *officers* as well as *seamen* in all cases, and so also as to include deaths by disease and casualties; and that, under this amendatory act, Mrs. White would have been entitled to a pension, whether her husband be considered as an *officer* or a *seaman*. It is true that the amendatory act of 1817 was repealed by the act of the 22d of January, 1824, but with a saving of pensions already granted, and of all rights accrued under it.

So much, then, may be considered as certain, viz: that Mr. White, provided her husband be regarded as an *officer*, was entitled, under the act of 1813, at her husband's death; and if not an officer, then under the act of the 3d of March, 1817, from the date of that act, to the ordinary pension of five years' half-pay.

Then comes the act of the 16th of April, 1818, in addition to the act of the 4th of March, 1814; but, as both sections of this law relate exclusively to persons who served in *private armed ships*, they have no bearing on the present case, and may be laid out of view.

Next in order of time is the act of the 3d of March, 1819, extending the term of half-pay pensions previously granted by law to the widows and children of certain officers, seamen, and marines, who had been killed or died in the naval service, *for an additional term of five years*. But this act did not apply to Mrs. White's case, whether her right be regarded as commencing under the act of 1813, or under that of 1817; because it is expressly confined to the cases of persons killed or dying "*during the late war*;" and White was killed in May, 1815, after the termination of the war. The same remark must be made as to the act of the 22d of January, 1824, "further extending the term of half-pay pensions," etc.; the acts of the 9th of April, 1824, or the 26th of May, 1824, (which are, moreover, confined to *private armed ships*;) and the 1st section of the act of the 23d of May, 1828, "extending the term of certain pensions chargeable on the navy and privateer pension funds."

But the act of the 28th of June, 1832, "further to extend the pensions heretofore granted to the widows of persons killed, or who have died, in the naval service, is not confined to cases which occurred during the war. It provides, "that, in all cases where provision has been made by law for the five years' half-pay to widows and children of officers, seamen, and marines, who were killed in battle, or who died in the naval service of the United States; and, also, in all cases where provision has been made for extending the term of five years, in addition to any term of five years, the said provision shall be, and is hereby, further extended for an additional term of five years, so far as respects widows only; to commence at the end of the current or last expired term of five years, in each case respectively."

This latter act embraces the case of Mrs. White, and adds five years to the five years before allowed by act of 1813, if her husband was an officer; and by that of 1817, if he be regarded as a seaman merely: thus making the pension equal to ten years half-pay.

The last act to be referred to is that of the 30th of June, 1834, which provides, among other things, that all the provisions and benefits of the act of the 28th of June, 1832, "be continued for another term of five years, to all those widows who have *heretofore* had the benefits of the same."

Having thus collected and examined the various statutes by which, as I suppose, the case must be determined, I proceed to inquire whether the benefit of these laws, or any of them, ought now to be extended to Mrs. White.

I find this question substantially answered by the opinions of my predecessors. In an opinion dated the 9th of June, 1825, and transmitted under that date to the Secretary of the Navy, the Attorney General speaks of the rights acquired by the widow under the 1st section of the act of March 4, 1814. Here is a certain right which the law says shall accrue to the widow on the happening of a certain event—that of her husband having died by reason of a wound received in the line of his duty on board of a private armed vessel. The law does not require either that an application should be made by her, or that any thing else should be done in order to consummate her right. It is consummated by the mere fact of the death of her husband under the circumstances already mentioned. It is a vested right to so much money *per annum*, for five years—subject, however, to be discontinued and defeated by her death or marriage at any time within that term; but a vested and perfect right during the time that she continued to live the widow of the deceased husband, and not defeated by her subsequent intermarriage, except from the time at which such intermarriage takes place.

Such I understand to have been the uniform practice under this act, ever since its adoption; and I confess that I see no reason for changing the practice. Although the foregoing observations were made in reference to a case arising under the first section of the act of 1814, (which section relates to *private armed ships*,) the principle laid down by the Attorney General is equally applicable to other cases.

He also says that the right of pension does not depend on the *necessities* of the parties. “It is given to the widows and children of officers and men, of rich and poor, without regard to their circumstances. It is in the nature of an absolute engagement or promise made to those officers and men, that if they fall in the service of their country, so much shall be paid to their wives and children, without inquiry into the fact whether they stand in need of it or not. Nor is there any condition annexed to the promise, that the money shall be paid *if applied for in a given time, or in a given state of things*. It is bottomed only on the single condition that the husband and father shall die in the service of his country; on the happening of which condition, the public engagement becomes a *debt*, which is as much *property*, and the pro-

perty of the widow and children, as any bond which the deceased may have left to them by his will."

He therefore affirmed the validity of the practice which had obtained, as then stated to him, in the Navy Department.

In accordance with these views, I am therefore of opinion that Mrs. White is now entitled to receive the pension for five years, secured to her by the act of 1813, or by the act of 1817, as you may decide in respect to the class to which her husband belonged—(in the first, the five years will have ended the 18th of May, 1820; in the latter, on the 3rd of March, 1822;)—and also for the additional five years given by the act of 1832.

In an opinion dated the 27th of October, 1832, and transmitted to the Secretary of the Navy, the Attorney General decided that the act of June 28, 1832, embraced in its provisions the widows of the different classes therein mentioned; "and that the pension of the widow, in each case, is to commence at the end of the *current or last expired term of five years.*" The five years added by this law will therefore have expired, in the one case, on the 18th of May, 1825; and, in the other, on the 3rd of March, 1827.

In regard to the law of June, 1834, my first impression was that it did not include Mrs. White's case; because it seemed to me, on a cursory examination of the act, that "*she had not therefore had the benefit*" of the act of the 28th of June, 1832. But, on further reflection, I am inclined to think that Congress, by those words, meant merely to require that the widow should be one *who was embraced within the law of 1832, and therefore entitled to its benefits*; and who, in that sense, might be said to have "*had the benefit of the same*;" and that they did not intend to make the actual *receipt and enjoyment* of the pension prior to the 30th of June, 1834, a condition precedent to the operation of the act of that date. I am confirmed in this opinion by another point adopted and decided by the Attorney General in the opinion of the 9th June, 1825, before referred to. He remarks, in reference to the language of the acts of the 16th of April, 1818, and the 9th of April, 1824, extending pensions previously granted, (the first of which extending acts is confined to cases "*where a person has been put on the pension-list or granted a certificate of pension,*" under the former law; and the other of which is confined to the "*pensions of persons who now are in the receipt thereof,*") that he understands, "If a widow, whose rights commenced under the act of 1814, now, for the *first time*, makes an application for her pension

under *all* the past acts, no difficulty arises to her now receiving all that these acts give her, provided that she still remains the widow of the deceased. I understand, also, that even where she has since intermarried before she has made any application, or has died before she has made any application, the uniform practice of the department has been not to consider the application too late for all that was due at the time of her intermarriage or death; the department having heretofore considered that as having been done which ought to have been done. It is a liberal exposition of these acts, in advancement of the public policy on which they were founded; and I see no sufficient cause to disturb it by recommending a change."

The language of the act of 1834 is certainly not so strong as that used by either of the acts first referred to; and I have, therefore, the less hesitation in applying the principle of the above extract. This will add another term of five years, to commence from the passage of the act of 1834.

The result, then, is, that according to the laws, usages, and decisions above stated, Mrs. White is entitled to a pension of *ten* years prior to the act of the 30th of June, 1834; and, under the latter act, to a pension of *five*, to commence from the day of the passage thereof. B. F. BUTLER.

To the SECRETARY OF THE NAVY.

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The collateral relatives of the half-blood are, in my opinion, entitled to participate equally with those of the whole blood.

*Opinion of Attorney General, Nov. 19, 1830.*

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The half-pay of the deceased officer, seaman or marine, means the half of his pay—so that twenty years' pension cannot exceed twenty years' half-pay.

*Opinion of Attorney General, July 22, 1828.*

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The act of the 3d March, 1817, entitled the widow of an officer, seaman, or marine, to receive half the monthly pay that her deceased husband was entitled to at his death; and although the act of the 3d March, 1835, regulating the pay of the navy of the United States, actually increased their pay without any reference to its operation on pensions, yet the pensions must be estimated according to the rates of increased pay *proper*, exclusive of perquisites.

ATTORNEY GENERAL'S OFFICE, *July 27, 1835.*

SIR: Pursuant to your directions, I have examined the various acts of Congress relating to navy pensions, and to the pay of officers of the navy, for the purpose of answering the question which has arisen in the case of Mrs. Henley, widow of the late Commodore Henley; and shall now proceed to state my views thereon.

The act of March 3d, 1817, provides, that if any officer belonging to the navy of the United States shall die in con-

sequence of disease contracted, or of casualties or injuries received, while in the line of his duty, etc., leaving a widow, such widow shall be entitled to receive "*half the monthly pay to which the deceased was entitled at the time of his death,*" to continue for the term of five years, etc.

This law must undoubtedly be regarded as furnishing the general rule by which the rights of Mrs. Henley are to be settled; and although we are obliged to refer to other laws regulating the pay of officers of the navy, yet, so long as such pay was made by the *month*, no difficulty could arise in its application. Even where the monthly pay may have been increased since 1817, the principle would be the same; the language of the act of 1817 being such as to accommodate itself to the monthly pay, whatever it may have been, to which the deceased officer was entitled at the time of his death.

Until the enactment of the late act "to regulate the pay of the navy of the United States," passed March 3d, 1835, captains in the navy were paid at the rate of one hundred dollars per month when commanding ships of thirty-two guns and upwards. Commodore Henley's case would have been governed by this law, had it not been for the new provision inserted in the act of 1835, which virtually repeals all former laws on the subject, and adopts the principle of *annual* instead of *monthly* pay; fixing that of captains in command of squadrons on foreign stations at four thousand dollars. To this annual pay Commodore Henley, as I understand, was entitled at the time of his death; and it is therefore urged, in behalf of his widow, that she is entitled, under the act of 1817, to one-half of this sum per year, or the twelfth part of it per month, as her pension. On the other hand, the Secretary of the Navy is of opinion that the act of 1835 was passed without any reference to pensions, and has decided that, until Congress otherwise directs, pensions must be granted according to the *monthly* pay to which the officer was entitled, by law, at the time when the act granting such pensions was passed. It is upon this decision, from which Mrs. Henley has appealed to the President, that my opinion is required.

It may be admitted as highly probable that the act of 1835 was framed without any special regard to the pension law, and that its effect was not considered by Congress; but I cannot entirely subscribe to the opinion that pensions are to be limited to one-half the monthly pay established by the former laws. I think it very certain that Congress, in passing the act of 1835, intended to raise the *pay proper* to naval officers; and, so far as this was intended to be done, it ap-



pears to me it ought to produce a corresponding increase of the pension. The mere fact that the pay, instead of being fixed at a monthly sum, is to be paid quarterly or annually, and that it is spoken of as *annual* pay, does not, in my judgment, prevent the application of the rule given by the law of 1817, provided it be practicable to ascertain the precise amount of *pay proper* given by the new law. The pension law of 1817 seems to have been framed with a view to meet the case of an increase in the monthly pay, as well as of differences in the amount to which the officer may be entitled, arising from other circumstances; and therefore expressly provides that the pension shall be, not "one-half of the monthly pay given and established by the laws now in force," (which is the construction adopted by the Secretary of the Navy,) but "one-half the monthly pay to which the deceased *was entitled at the time of his death.*" We are, therefore, as it seems to me, obliged to resort to the law of 1835, by which Commodore Henley's pay was regulated and fixed at the time of his death; and are not at liberty to take the amount fixed by the former law, which, as already observed, is repealed by the act of last session.

But I am by no means prepared to say that the widow is entitled to one-half the gross sum prescribed by the act of 1835. It is obvious, from the history of this law, and from its provisions, that Congress intended to include in the gross sum fixed by it, not only a certain amount of *pay proper*, (considerably increased beyond the monthly pay given by the former law,) but also to embrace an allowance for all the *rations* but one, and for sundry other *perquisites*. And as the pension laws have never been so framed as to give any part of those rations and perquisites to the widow or children of the officer, but, on the contrary, are carefully limited to one-half of the *pay proper*, I think the pension to be allowed to Mrs. Henley ought to be confined to one-half of so much of the annual sum of four thousand dollars as may be found to be referable to *pay proper*. The rations, (over one ration per day,) and the other perquisites, to which an officer in the situation of Commodore Henley at the time of his death would have been entitled under the laws in force on the 2d of March 1835, must be deducted from the sum of four thousand dollars; and the one-half of the residue after such deduction, will, in my opinion, be the proper annual pension to be allowed to Mrs. Henley. I have not in my possession the proper means of ascertaining the precise amount which this principle will give her; and, besides, the statement and liquidation of the sum to be deducted from

the annual pay, and the calculation of the pension, more properly belonging to the Navy Department.

B. F. BUTLER.

To the PRESIDENT OF THE UNITED STATES.

NOTE. The foregoing opinion has been set aside by the decision of the Secretary of the Interior, who decides that "the monthly pay on the 1st January 1835, governs the rate of pension, and not the increased pay under act of March 3, 1835."

The widow of a deceased officer temporarily employed in a *higher grade*, without commission in that grade, though with a reasonable expectation, amounting even to moral certainty, of receiving promotion to such grade, is only entitled to a pension from the time of his death at the grade of his actual commission.

ATTORNEY GENERAL'S OFFICE, *April 27, 1839.*

SIR: I have had the honor to receive your communication of the 25th instant, relative to the claim of Mrs. Coxe, as widow of J. S. Coxe, who died in the naval service of the United States.

Mrs. Coxe now claims the same pension to which she would have been entitled had her husband been actually appointed a lieutenant before his death, on the ground that he had been acting as lieutenant, and in that capacity had rendered very meritorious services; and on the ground, also, that he had been nominated by the President to the Senate for promotion to a lieutenancy; and which nomination would undoubtedly have been confirmed, had he not died before the action of the Senate could be had thereon.

The question for my opinion is, whether she is to receive a pension on account of her deceased husband as a midshipman or lieutenant? My opinion is, that his acting as lieutenant, and his being nominated by the President for promotion, could not change his rank until the confirmation of the Senate. This confirmation was prevented by his death. He died a midshipman, and his widow must receive a pension accordingly.

FELIX GRUNDY.

To the SECRETARY OF THE NAVY.

In case the deceased leaves a widow, who intermarries or dies without having claimed her right to a pension, her second husband or legal representatives are entitled to the amount accruing from the death of her deceased husband till her second marriage.

ATTORNEY GENERAL'S OFFICE, *April 5, 1836.*

\* \* \* The case stated in your letter of the 26th January is as follows—"During the late war with

England, an individual was killed on board of a private armed vessel of the United States, in an action with a British ship. His widow did not apply for a pension. She married again; but the second husband, during her life, did not prefer the claim. After her death, he demanded the pension from the date of the first husband's death to the time of the second marriage. The woman had no children."

On this case you inquire, 1st, Whether a pension shall be paid? and, if so, 2d, Who is the proper person to receive it?

The opinion of the Attorney General dated the 9th of June, 1825, and transmitted on that day to the Secretary of the Navy, settles the first of these questions in the *affirmative*.

In that case, as in the present, a person had lost his life during the late war, while in the line of his duty on board a private armed vessel. He left a widow and children under the age of sixteen. No application for a pension was preferred until 1825, before which time the widow had intermarried. After her re-marriage, she applied for a pension on behalf of her children, (some of whom were under sixteen,) and, also, for the portion of the pension between the death of her first husband and her second marriage. The Attorney General, in an elaborate opinion, in which he stated the provisions of the laws, and the practical construction which he understood they had received in the Navy Department, decided that the widow had a *vested and perfect* right to the pension during her widowhood, and that her right to receive it for that period was not affected by her subsequent marriage.

The precise point now presented was not, indeed, submitted for decision in that case; but the principal laid down by the Attorney General, and the reasoning of his opinion, are equally applicable to the present claim, as you will perceive on referring to the opinion, which I take for granted, may be found on the files of your department. Indeed, he puts, by way of illustration, the very case involved in your question, and speaks of it as having been settled by the practice of the department. "I understand," says the opinion, "that even where the widow has intermarried before she has made any application, *or has died before she has made any application*, the uniform practice of the department has been, not to consider the application too late for all that was due at the time of *her* intermarriage or death, the department having heretofore considered *that* as having been *done which ought to have been done*." And he proceeds to express his approbation of the practice as conformable to the spirit and design of the law. For a fuller exposition of the grounds

on which the opinion of my predecessor was founded, I beg leave to refer you to the document itself.

Your second question must be solved by applying to the present case the rules of law in regard to the right of the husband in the property of his wife, in force in the State where the parties resided at the time of his wife's death. By the law of England, the husband, if he survives his wife, is entitled to administer on her estate, and to recover all debts due to her at the time of marriage, and all her other outstanding choses in action, for his own use, subject only to his liability for debts contracted by her whilst a *femme sole*, to the extent of the assets received by him. This is the general rule in the American States; though in Maryland, and perhaps in some other States, the husband has been relieved from the necessity of taking out letters of administration.

B. F. BUTLER.

To the SECRETARY OF THE NAVY.

If an officer, seaman, or marine, has died before the passage of the act of the 3d March, 1837, and has left a widow, who was living at the time the act was passed, she would be entitled to a pension under that act, if she did not marry again before the passage of the act; but if she did so marry, and the decedent left children (living at the date of the act) they would be entitled, from the death of the father, till 21 years of age.

ATTORNEY GENERAL'S OFFICE, April 7, 1837.

SIR: In answer to the questions arising in the case of the late widow and of the children of Purser Timberlake, referred to in your letter of the 27th ultimo, I have the honor to inform you that, after due consideration of the act of 3d of March, 1837, "for the more equitable administration of the navy pension fund," I am of opinion—

1. That to entitle a woman, as the *widow* of an officer, seaman, or marine, to the pension given by the law, she must have remained in a state of widowhood. The party serving must die *leaving a widow*; and it is "*such widow*"—that is, the *widow left by the decedent*, and the widow of the decedent—who is entitled. Mrs. Timberlake, having re-married, can therefore claim no benefit under the act.

2. That where the decedent has left a widow and children, and the former has married before the passage of the act, the children, within the equity of the law, and by a liberal construction of its provisions, are entitled to its benefits. I am accordingly of opinion that the children of Purser Timberlake are entitled to the half-pay granted by the first section of the act, from the death of their father, to cease on their death, or on their attaining the age of twenty-one years.

B. F. BUTLER.

To the SECRETARY OF THE NAVY.

If an officer, seaman, or marine, has died before the passage of the act of the 3d March, 1837, and left a widow who has also died before the passage of said act, her representatives are estopped by her death from coming within the benefit of the act for the previous term of her widowhood.

ATTORNEY GENERAL'S OFFICE, *April 11, 1831.*

SIR: In your letter of the 29th ultimo you state the following case:

"The widow of Captain Alexander Murray, of the United States navy, survived him several years, and died his widow, without having received a pension on account of his death. The legal representative of Mrs. Murray now claims the pension for the period she remained a widow, under the act of 3d of March, 1837." On this claim you ask my opinion.

In reply, I have the honor to inform you, that, as Mrs. Murray died before the passage of the act under which the claim is made, I am of opinion no right to any of the benefits granted by that law was vested in her, to be passed to her representative. In similar cases arising under the general pension law of the 4th of July, 1836, I had occasion to adopt this principle; and, though many considerations may well be urged in favor of extending the law so as to reach these cases, yet it is only to Congress that they can properly be addressed.

B. F. BUTLER.

To the SECRETARY OF THE NAVY.

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The widow of any person borne on the ship's books as one of the crew, and is amenable to martial law, being therefore a seaman, is entitled to a pension.

ATTORNEY GENERAL'S OFFICE, *Nov. 18, 1837.*

SIR: In reply to your letter of the 3d instant, in relation to the claim of Mrs. Proctor, I have the honor to inform you, that if (as I understand is the fact) the steward serving on board a ship-of-war is borne on the ship's books as one of the crew, and is amenable to martial law, I think he must be regarded as a *seaman*, within the pension laws, so as to entitle his widow to a pension. In the particulars stated, such a case is entirely distinguishable from that of the *hospital* steward to which you refer.

B. F. BUTLER.

To the SECRETARY OF THE NAVY.

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The arrear of pension granted to officers, seamen, and marines, by the act of 3d March, 1837, though the decedent had received no part of it, must be paid to his widow or his legal representatives.

ATTORNEY GENERAL'S OFFICE, *March 23, 1839.*

SIR: I have the honor to acknowledge the receipt of yours of the 9th ultimo, in which you state that Hamlet Moore, a

navy pensioner, died on the 19th of October, 1838; that, under the act of Congress of the 3rd of March, 1837, for the more equitable administration of the navy pension fund, he was entitled to arrears of pension from the date of his injury received in the naval service. And my opinion is asked, whether his arrears of pension, not being received by him in his lifetime, shall revert to the navy pension fund, or be paid to his legal representatives?

The second section of the act referred to declares "that the pensions which may have been granted to officers, seamen, and marines in the naval service, disabled by wounds or injuries received while in the line of their duty, shall be considered to commence from the time of their being so disabled," etc.

So soon as this law passed, the pensioner became entitled, in my opinion, to his arrearages of pension, as fully as he was to the pension itself; and although he died without having received what was due to him, still the money does not belong to the navy pension fund, but must be paid over to his legal representatives.

FELIX GRUNDY.

To the SECRETARY OF THE NAVY.

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A specific pension granted to an individual, counteracts the claim of the same individual to a pension under the general provisions of an act passed on the same day; unless an election is made by the claimant to take the one and relinquish the other.

ATTORNEY GENERAL'S OFFICE, *April 11, 1837.*

SIR: I have had the honor to receive your letter of the 15th ultimo, relative to the case of Mrs. Susan Decatur.

It is assumed in your statement of the case, that Mrs. Decatur would be entitled to the pension granted by the act of the 3d ultimo, "for the more equitable administration of the navy pension fund," were it not for the doubt created by the passage, on the same day, of the joint resolution for her special benefit. And, on these two laws, you inquire whether she is entitled under the resolution, or under the act, or under both?

This case differs from that of Mrs. Perry, referred to in the note of Mrs. Decatur, accompanying your letter, inasmuch as the law under which Mrs. Perry ultimately obtained her pension was in existence at the time of his death; at which time she was also entitled (although not then aware of the fact) to its benefits. I held, in her case, that the law granting her *annuity* (for such it was called) could not deprive her of a pension given by a pre-existing law; and that, as Congress were presumed to be acquainted with the laws in

force, the legal intendment must be that the annuity was designed as an additional provision, and, consequently, that she was entitled to both.

After maturely considering the history of the general and special provisions on which the present case depends, I am of opinion that but *one* pension can be allowed; but if the general provision includes the case of Mrs. Decatur, then I am of opinion she is entitled to take under that provision, or under the joint resolution, at her election.

B. F. BUTLER.

To the SECRETARY OF THE NAVY.

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A person entitled to a pension under a general law, and also under a special act must elect between them, and, having made the election is bound by it.

*Decision Secretary of the Interior.*

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Suicide in a fit of Insanity, superinduced by disease contracted in the line of his duty, entitles his widow to a pension.

*Decision Secretary of the Interior.*

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"The pensions granted to widows, etc., by the act of the 3d March, 1845, commence from the period of their cessation under the former acts of 1834, 1837, and 1841, respectively."

ATTORNEY GENERAL'S OFFICE, *March 19, 1845.*

SIR: In your communication of the 14th instant, you request my opinion on a question submitted to you by the Commissioner of Pensions in relation to the proper construction of the naval pension act of March 3d, 1845. The Commissioner states the question to be: "Whether the pensions granted by this act shall commence when the last five years' pensions ended, or when the last pensions, under the act of 1837, were paid to the pensioners respectively." The act of March 3d, 1845, embraces only the cases of those widows whose husbands have died under circumstances to entitle them to pensions under the provisions of the pension act of June 30th, 1834. Pensions granted by that act terminated in 1839. By the act of 1837, a provision was made for pensions to widows of officers, seamen, and marines, who had died in the naval service, without specifying the mode of the death. Its terms were more comprehensive, and embraced many cases which were not within the provisions of the act of 1834; while those entitled under the act of 1834 were clearly entitled under the act of 1837; and many thus entitled applied and received the benefits of this act. The question submitted depends on the inquiry whether the act of 1837 may be regarded as a renewal of the pensions pre-

viously granted. If it be not so construed, a widow whose pension expired in 1839, granted under the act of 1834, may have received, under the act of 1837, her pension, by reason of the death of her husband, from the 30th June, 1839, to 31st August, 1842; and by the act of the 3d March, 1845, receive the same pension for the same cause, during the same time; thus receiving a double pension for the same period of time. This cannot be presumed to have been the intention of Congress; nor will such a construction give effect to the proviso to the act under consideration. I am, therefore, of opinion that the act of 1837 was a renewal of the pensions previously granted for five years, within the meaning of the act of March 3d, 1845; and that widows' pensions, under this act, shall commence from the period at which they ceased, whether under the act of 1834, or that of 1837, or the act of the 16th August, 1841.

J. Y. MASON.

To the SECRETARY OF THE NAVY.

"The act of March 3, 1845, extends a pension for five years to those widows who received pensions under former acts in consequence of the death of their husbands having been occasioned by wounds received, or by accident, or by disease contracted, whilst acting in the line of their duty as officers, seamen, or marines.

"The act of 1837 was a renewal of pensions granted to widows entitled under the act of 1834, within the meaning of the act of March 3, 1845.

"The fact of their being placed on the pension roll by virtue of the more comprehensive terms of the act of 1837, does not affect their rights under the act of March 3, 1845.

"The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and this, whether the pensions were granted by the Commissioner of Pensions under the act of 1834 or that of 1837, provided the pensions granted were authorized by the act of 1834."

ATTORNEY GENERAL'S OFFICE, *April 14, 1845.*

SIR: I have considered the general question presented in your letter of the 10th instant, as to the effect of the act of March 3, 1845, renewing certain naval pensions for the term of five years, and its application to the particular case of Mrs. Ann J. Ross, widow of Lieutenant Ross of the marine corps, who was killed in battle with the Seminole Indians in the month of December, 1836, the facts of whose case are set forth in the letter addressed by the Commissioner of Pensions to the Secretary of the Navy on the 3d instant. In the letter which I had the honor to address to you on the 19th ultimo, I expressed the opinion that the act of 1837 was a renewal of the pensions previously granted to widows entitled under the act of 1834 within the meaning of the act of March 3, 1845. By the death of her husband in battle, Mrs.



Ross was entitled under the act of 1834. The fact of her being placed on the pension roll by virtue of the more comprehensive terms of the act of 1837, does not affect her rights under the act of March 3, 1845. The purpose of Congress was manifestly to extend a pension for five years to those widows who had previously received pensions in consequence of the death of their husbands, (being officers, seamen, and marines,) who had been killed in battle, or who had died by reason of a wound received in the line of their duty, or who had died from disease contracted, or of a casualty by drowning or otherwise, or of injury received, while in the line of their duty. This intention would be defeated in cases of the most meritorious character, if the words employed be construed to embrace only such cases of pension as were granted for five years. The terms of the act are fully satisfied by extending its provisions to cases which were within the act of 1834, although the pensions were granted for an indefinite period; and I am of opinion that this may be done whether the pensions were granted by the Commissioner of Pensions under the act of 1834, or under that of 1837, provided the pension granted would have been authorized by the act of 1834. Mrs. Ross is, therefore, entitled to the benefit of the act of March 3, 1845, subject to its restriction.

J. Y. MASON.

To the SECRETARY OF THE NAVY.

The act of 3d March, 1845, authorizes the renewal of pensions to such widows of officers, seamen, and marines only as had enjoyed a five years' pension under previous laws, and which had ceased in consequence of the expiration of the period for which the same had been granted or renewed.

"Widows who had not been such for five years, or who had not exhausted their five years' pension under former laws, are not provided for.

"The applicants in this case not having been widows for the period of five years, and not having exhausted their pensions under former laws, are therefore not entitled to the benefit of the act of 3d March, 1845, but are left to the generosity and justice of Congress in the premises."

ATTORNEY GENERAL'S OFFICE, *January 23, 1847.*

SIR: I had the honor to receive your letter of the 2d ult., requesting my opinion on the claims of Elizabeth E. Chandler and Catharine L. Armistead, for a renewal of their pensions, under the act of 3d March, 1845. By that it is provided "that the pensions for the period of five years, which have been heretofore granted out of the naval pension fund to the widows of officers, seamen, and marines, who have been killed, or died by reason of a wound received in the line of their duty, or who have died by reason of disease contracted, or of a casualty by drowning or otherwise, or of

injury received while in the line of their duty, and which pensions have ceased in consequence of the expiration of the period for which they were originally granted, or for which they were subsequently renewed, shall be continued for another period of five years to such of said widows as may have remained unmarried, to commence from the day on which such pensions respectively terminated." According to the statement contained in your letter, the husband of Mrs. Chandler died in July, 1841, of a disease contracted while he was in the performance of his duty. She was, therefore, entitled to a pension either under the law of 1834 or that of 1837; the language of both acts including her case. She received a pension under the latter, commencing from the date of her husband's death, and continuing until August, 1842—a period of one year and a month, when the law of 1837 was repealed. It was subsequently decided by the department that in all cases where a widow who was equally entitled under the law of 1834 had received her pension under the act of 1837 for a less period than five years, and by the repeal of that law had been cut short of her five years' pension, might still be pensioned for the remainder of the term under the law of 1834. Under this decision Mrs. Chandler's pension for the residue of her term was renewed on the 11th day of March, 1845, to take effect from August, 1842, and expired in July, 1846. The case of Mrs. Armistead is similar in all respects necessary to be considered in the decision of the question submitted. Her husband died on the 14th day of April, 1841; and on the 17th day of July following she was allowed a pension under the act of 1837, after the repeal of that law; being within the class of widows entitled to a five years' pension under the act of 1834. A pension certificate was issued in her favor under that law on the 16th day of May, 1845. Her pension commenced from the 14th of April, 1841; but the amount previously paid her under the act of 1837 was directed to be deducted. Her five years expired on the 14th of April, 1846. Upon this statement of facts the question submitted by you for my consideration is, whether Mrs. Chandler and Mrs. Armistead may now have properly the benefit of the act of the 3d of March, 1845, as widows whose pensions had expired at the time the act passed; or whether they are concluded by the renewal of their pensions and the receipt of the same, under the act of 1834, subsequent to the passage of the law of 1845. It is very clear that the act of the Commissioner of Pensions, in renewing their certificates, cannot change the law, or in any respect impair their rights, if any they

have, to claim the bounty of the government under that act. And it is not less clear that the receipt of the periodical payments, secured by the certificates, is equally inefficacious to any such result. The true construction of the act took date from its passage, uninfluenced by any extraneous circumstances or subsequent event. Its meaning must be gathered from its language, in connexion with the general system of legislation upon the same subject matter. While, therefore, I am of opinion, after a careful examination of the act in question, that the cases of Mrs. Chandler and Mrs. Armistead do not come within its provisions, it is proper to remark that my opinion is not based in any respect upon the ground assumed in the inquiry submitted, that these parties are estopped or concluded by any act or event subsequent to the passage of the act under which they now claim. That doctrine cannot be sustained; nor is it necessary to invoke it in this case. Neither of the cases submitted is provided for in the terms of the law relied upon in their behalf. The act, you will observe, is confined to cases where widows have already enjoyed a five years' pension under previous laws, and which had ceased in consequence of the expiration of the period for which it had been granted or renewed.

When the law of 1845 went into operation, neither Mrs. Chandler nor Mrs. Armistead had been a widow for the period of five years. The husband of the former died in July, 1841, and that of the latter on the 14th of April previous. Both, therefore, were then entitled to an unexpired portion of their first five years under the act of 1834. Neither had exhausted their five years' pension under a law then in full force. It is true they were not in the actual receipt of the money; they had not obtained their certificates, as no decision had been made by the proper department. The answer to this is readily given. The act under consideration is not based upon the action of the department, but upon the previous statutes *in pari materia*, especially upon the law of 1834. They were entitled by an existing law; and if entitled, then their pensions had not ceased within the language or spirit of the act of 1845. Their first five years had not expired. The act gives another term of five years to those only whose primary right, whether by original grant or renewal, had ceased in consequence of the expiration of the period for which they were originally granted or renewed. The continuation is extended to those pensions only which have been theretofore granted for the period of five years, to commence from the day on which such pension respectively terminated. The language is too plain, it seems to me, to ad-

mit of a doubt, that Congress intended to include such cases only as had actually expired at the date of the law. No other construction can be given short of downright legislation. The terms of the act apply so explicitly to past cases, that it cannot be made to include such as have expired since its passage. No provision being made for future cases, they must be left to the justice of Congress, where I have no doubt an appeal might well be made in behalf of all similar claimants.

NATHAN CLIFFORD.

To the SECRETARY OF THE NAVY.

"The first section of the act of 11th August, 1848, renewing certain naval pensions, embraces all such widows and children as were receiving pensions under any of the laws of Congress passed prior to the 1st of August, 1841.

"The other class comprises all those widows and children who received pensions at any time within five years prior to the passage of the act.

"The word 'special' occurring in said act is construed to mean 'particular,' and not 'private,' as it is used in that sense.

"As Congress neglected to provide, in terms, for widows of second lieutenants of marines in the second section of said act, it may be inferred that it intended to refer, in the provision, to lieutenants without any other designation."

ATTORNEY GENERAL'S OFFICE, *September 6, 1848.*

SIR: I think the first section of the act renewing certain naval pensions, etc., passed August 11, 1848, is not to be regarded as embracing only those widows and children to whom pensions had been granted, in single instances, by private acts. Such a restricted construction is obviously opposed to the intention of Congress. The description of the first class is in these words, viz: "all those widows and such child or children as are now receiving a pension under any of the laws of Congress passed prior to the 1st of August, 1841." The words are, "any of the laws," not "*private laws*," as it would have been, if such only were intended. The exception which follows shows the same intention, because the excepted law passed on the 3d March, 1837, was one of the broadest and most general pension laws which had been enacted; and there was no room for the exception, unless it was included in the general description of the persons entitled to the renewal. This is quite decisive of what was in the mind of the legislature. The description of the other class entitled to the renewal is equally general—"those widows and children who have received pensions at any time within five years prior to the passage of this act." All these persons are, by the express words, within the purview of the act, and are declared to be entitled to a renewal. But then comes the supposed restriction, which by a violent construction, would throw out the greater part—almost

all who had before been included by a precise and definite description: they "may and shall continue to receive the same amount as they have received under any special act from the time such special act expired." The word "special" here does not mean "private," but particular. I think the word is used in that sense. It comports with the general tenor and language of the whole section. The other sense of which the word in another connection would be susceptible, would, if applied to it here, overturn and control all the other language used in the direct description of the persons intended, explicit and unequivocal as it is, contrary to the apparent intention of Congress.

As to the question under the second section, there might be more room for doubt. In enacting that "the pension of a first assistant engineer" shall be "the same as that of a lieutenant of marines, and the pension of the widow of a first assistant engineer the same as that of the widow of a lieutenant of marines." Congress seems to have lost sight of the fact that there was a second lieutenant of marines, and might therefore be supposed to have referred to the first lieutenant only. But, in common parlance, "the lieutenant," without further designation, whether of marines or of infantry would universally be understood to mean the senior lieutenant and not the second lieutenant; and this familiar and reasonable rule—the meaning of language in common use, which is always a most sure guide to the true legislative intent—may be applied in this instance, where the law seems to have been enacted without a minute or particular attention to the previously existing law.

ISAAC TOUCEY.

To the SECRETARY OF THE NAVY.

#### FORM OF APPLICATION FOR WIDOW'S NAVY PENSION.

*To the Commissioner of Pensions:*

The memorial of the undersigned,..... the widow of....., who was a..... in the Naval service of the United States, respectfully sheweth:

That the said..... entered the service in the year....., and died therein, while holding the rank above mentioned, on the....., by reason of....., in the line of duty.

That the undersigned was married to the said....., on the..... day of....., in the year....., and that the following is a correct statement of the name... and age... of the child... of such parties now living:...

That your memorialist remain... unmarried, and widow of the said..... to the....., and referring to the evidence filed....., claims the benefit of the laws granting Navy Pensions to the widows of Officers, Seamen, and Marines, who have died in the Naval service, and requests that her name

may be inscribed on the roll of pensioners, payable at the Navy Pension Agency,  
at .....

Sworn and Subscribed before me on this .... }  
day of ....., in the year .... }

PENSION OFFICE, *May 23, 1853.*

SIR :—For your information, I enclose a Form of Application for widow's Navy Pension, together with a printed sheet exhibiting the description of evidence furnished to this office under the General Order of February 17th, 1851, in every case of disability or death in the Naval service.

In all claims for widow's pension, or renewal thereof, it must be shown by evidence, accompanying the application, or already on file, that the husband lost his life while in the Naval service, by reason of wounds or injuries received, casualty incurred, or disease contracted in the line of duty. In cases of date subsequent to that of the General Order, such evidence may generally be found here; but if of prior date, must, if practicable, be furnished by the certificates of medical or other commissioned officers of the Navy, cognizant of the facts. If, after using due diligence, such certificates cannot be obtained, the applicant can then present such other testimony as would be taken in a court of Justice.

The usual legal proof of marriage must be produced, accompanied by a statement of the names and ages of all children of the parties, whether the fruit of their own or of former marriage. This last is to be desired, not only as a security to the Government, but as facilitating any future claim on the part of the children.

The widowhood and identity of the applicant should be stated in the memorial, and certified by the officiating magistrate, or established by the affidavit of credible witnesses; and all evidence (excepting the official certificates of Naval officers) must be given by affidavit before a magistrate, whose official character shall be certified by the clerk of the county (in which he acts) under his seal of office.

Applications for Orphans' Navy Pension may be made in the following cases :—

1. Death of mother before the father.
2. Death of mother since the father, but without having received the benefit of the pension laws.
3. Death or intermarriage of their mother since having received such benefit.

In the 1st and 2d cases, the same testimony would be required as in widows' applications, together with legal proof of the names and ages of the children.

In the 3d case, the latter only.

Orphans' applications can be made by the legally appointed guardian, in any form embracing a statement of facts. Arrearages of pension may be paid to the orphans themselves, if adults, or to an administrator, for the sole and exclusive use and benefit of the children of the deceased parties.

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FORM OF APPLICATION OF A WIDOW IN ORDER TO RENEW HER  
PENSION, UNDER THE ACT OF.....

*To the Commissioner of Pensions :*

The memorial of the undersigned, the widow of the late....., who was a..... in the Navy of the United States, respectfully shows :

That her husband, the aforesaid....., entered the service of the United States in the year.....; that, while in the said service, and holding the rank above mentioned, he departed this life, at \*....., on the ....day of....., in the year.....; that the undersigned was married to the said..... on the.....day of....., in the year....., and in proof thereof, she refers to papers on file in the Pension Office, upon which she obtained a pension for five years. She therefore claims the benefits of the act of Congress of the....., granting pensions to the widows of officers, seamen, and marines, who have died in the service aforesaid ; and she requests that her name may be inscribed on the roll of pensioners under that law, who are paid at....., in the State of.....

SWORN TO AND SUBSCRIBED before me, this..... }  
day of....., in the year.... }

[The certificate of official character and signature of the magistrate who may administer the oath to be here subjoined.]

\* If at a navy yard, the fact must be stated, and the name of the navy yard ; if on board of a vessel of war, the name of the vessel must be given.

# INSTRUCTIONS AND FORMS OF APPLICATION

FOR

PAYMENT OF PENSIONS UPON CERTIFICATES

ISSUED BY THE PENSION OFFICE.

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In case a pension has remained unclaimed by any pensioner for the term of *fourteen* months after the same has become due and payable, it cannot be paid by the Pension Agent, but application therefor must be made to the Treasury Department: if the certificate issued, through the War or Interior Departments, (on account of military service,) to the *Third Auditor*; if through the Navy Department, to the *Fourth Auditor* of the Treasury.



## DIGEST OF OFFICIAL INSTRUCTIONS

## TO AGENTS FOR PAYING PENSIONS.

1st. When application is made for the payment of a pension, the first thing that seems necessary is, that the identity of the person in whose behalf the pension is claimed should be established. .

2d. Under the provisions of the acts of 6th April, 1838, and 23d August, 1842, where a pension has remained unclaimed by any pensioner for the term of *fourteen months* after the same became due and payable, it cannot be paid by the Pension Agent, but application therefor must be made to the Treasury of the United States through the Third Auditor, if the pension certificate issued from the War Department; and through the Fourth Auditor, if it issued from the Navy Department. Each Pension Agent, immediately on the expiration of fourteen months, subsequent to each semi-annual payment, will certify to the office of the Second Comptroller a correct list, containing the name, rank, rate of pension, amount due, and time of last payment of each pensioner remaining unpaid on the roll of his agency, whose pension has been due and payable for the term of fourteen months prior to the date of such certificate. When, however, a new pensioner is placed on the roll, or an old pension is renewed, the fourteen months commences running from the semi-annual payment next after the date of his, or her, pension certificate, and not from the commencement or renewal of the pension.

3d. When an attorney shall make application for a pension, *be the rank of the pensioner what it may*, he must deposit with you a power of attorney in his favor, duly acknowledged, and dated on, or subsequent to, the day on which the pension claimed became due, and within ninety days of the time of his applying for payment, and also his own affidavit that said power was not given him by reason of any *sale, transfer, or mortgage* of said pension; and the execution of the power must be in the presence of at least one witness, other than the magistrate before whom it is acknowledged.

4th. In all cases of payments upon a power of attorney, the Justice of the Peace or Magistrate before whom the power is executed, must have lodged with the agent the certificate of the Clerk of some Court of Record, under seal of the Court, that he is legally authorized to act as such; and also a paper bearing his proper signature, certified to be such by the Clerk of some Court of Record.

5th. It is advisable, and is so recommended, that Pension

Agents procure and place in a book the signatures and seals of Clerks of the different Courts within their agency, who may be authorized to certify as to powers, the better to detect, by comparison of the signatures and seals, impositions that may be attempted.

6th. Under the provisions of the acts of 2d March, 1829, and 29th June, 1840, in case of the death of any pensioner, the arrears of pension due to him at the time of his death must be paid—

I. "To the widow of the deceased pensioner, or to her attorney," proving herself to be such before a Court of Record.

II. If there be no widow, then to the executor or administrator on the estate of such pensioner, for the sole and exclusive benefit of the children, to be by him distributed among them in equal shares; and the law of 1840 declares that the arrears of pension "shall not be considered a part of the assets of said estate, nor liable to be applied to the payments of the debts of said estate in any case whatever."

III. In case of the death of any pensioner who is a widow leaving children, the amount of pension due at the time of her death must be paid to the executor or administrator for the benefit of her children, as directed in the foregoing paragraph.

IV. In case of the death of any pensioner, whether male or female, leaving children, the amount of pension may be paid to any one or each of them, as they may prefer, without the intervention of an administrator. If one of the children is selected to receive the amount due, he, or she, must produce a power of attorney from the others for that purpose, duly authenticated.

V. If there be no widow, child, or children, then the amount due such pensioner at the time of his death must be paid to the legal representative of the decedent.

VI. When an Executor or Administrator shall apply for the pension due to a deceased person, he must deposit with you a certificate of the Clerk of the Court, Judge of Probate, Register of Wills, Ordinary or Surrogate, (as the case may be,) stating that he is duly authorized to act in that capacity on the estate of the deceased pensioner, and, if a male, that it has been proved to his satisfaction that there is no widow of the said pensioner living.

7th. In all cases of payments being made of moneys due a deceased pensioner, the original pension certificate must be surrendered, as evidence of the identity of the person to whom the pension claimed was due, or other substantial evi-

dence of such identity must be produced in case such certificate cannot be obtained for surrendry, and that due search and inquiry have been made for said certificate, and that it cannot be found. The date of said pensioner's death must be proved before a Court of Record.

8th. A certificate of the facts proved must be obtained from the Clerk of the Court. It is not necessary for the Clerk to give the evidence in detail, but only to state the facts that have been proved, and certify under his seal of office that the testimony adduced was satisfactory to the court; and in case a pension certificate is illegally withheld from a pensioner, he, (or she, as the case may be) must produce evidence of identity and the facts.

9th. When a pensioner is placed under guardianship, the Guardian applying for a pension must, in addition to the evidence of the pensioner's identity, deposit with you a certificate, from the proper authority, that he is, *at that time*, acting in that capacity, and also satisfactory evidence that his ward was living at the date the pension claimed became due. The identity of the pensioner, in such cases, must be established.

10th. For all payments made by you duplicate receipts must be taken, one of each you will forward, with your quarterly accounts, to the Third Auditor of the Treasury for pensions under the War Department, and to the Fourth Auditor for pensions under the Navy Department; and in *all* cases where a pensioner or attorney makes a mark from inability to write his name, there must be a witness thereto, otherwise such receipt or voucher will not be admitted at the Treasury.

*Note.*—By the second section of "An act making appropriations for the payment of the Revolutionary and other pensioners of the United States," approved February 22d, 1840, Pension Agents are authorized to administer all oaths required to be administered to pensioners, attorneys of pensioners, or others, in the course of the preparation of papers for the payment of pensions under any of the laws of Congress; and to charge and receive the same compensation therefor as the laws of the State in which the agent is located allow to magistrates for similar services.

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## DECISIONS

OF THE SECOND COMPTROLLER OF THE TREASURY, RELATIVE TO THE  
PAYMENT OF PENSIONS, BY "AGENTS FOR PAYING PENSIONS."

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THE references are to the volume and books in the Comptroller's Office containing the *decisions*.

1. The second Comptroller has no authority to decide on pension claims; that belongs exclusively to the Commissioner of Pensions.—*Vol. 10, p. 353.*

2. The decisions of the Pension office as to the allowance of pensions, and the

designation of heirs, executors, administrators, and guardians, to whom payment should be made, are to be regarded as final by the accounting officers.—*Vol. 15, p. 82.*

3. Pensions are payable to the persons named in the certificate, if living, and to the legal representatives of such as may have died.—*Vol. 14, p. 21.*

4. No deduction is to be made from the amount of pension due a deceased pensioner, on account of his indebtedness to the United States which accrued before the granting of the pension.—*Capt. Angus's case, May, 1837.*

5. If once placed on the pension roll, and thus acquired a legal claim to a semi-annual payment of a certain sum of money, the pensioner shall fail to assert this claim for six years, he cannot have his account audited without the authority of Congress.—*Vol. 11, p. 107, 160.*

6. When the War Department has given special directions as to the payment of a pension, it is the duty of the pension agents to follow the directions; and if payment be made, not in accordance with such directions, it cannot be admitted at the Treasury to the credit of the agent.—*Vol. 11, p. 403.*

7. An Invalid pensioner is legally entitled to his pension, although employed on hire in the service of the United States.—*Vol. 14, p. 68.*

8. The conviction and imprisonment of a pensioner for crime, does not disqualify him from taking the usual oath of identity; nor does it deprive him of his right to draw his pension, or to appoint an agent to draw it for him.—*Dec. March 20, 1852.*

9. When an act of Congress directs the Secretary of War to make payment of a pension to the heirs of a deceased person, and that officer has issued the certificate in conformity to the law, the pension agent cannot pay over the money to any other person than the heirs, as expressly directed in the act.—*Vol. 13, p. 30; vol. 12, p. 376.*

10. The amount of pension due a pensioner under several acts of Congress, can be properly paid without a separate power of Attorney under each act. One power of attorney will be sufficient, if it covers all the time for which the pension is due under all the acts.—*Vol. 14, p. 141.*

11. A pensioner may at any time revoke a power of attorney, which he has given for the collection of his pension, and demand payment to himself at the agency.—*Vol. 14, p. 464.*

12. By the 4th section of the act of July 4, 1836, the attorney of a pensioner is required to make oath, not only that he has no interest in the money by any pledge, etc., but also that "he does not know or believe that the same has been so disposed of to any other person whatever."—*Vol. 8, p. 43.*

13. The oath to be taken by the attorney of a pensioner claiming under the act of July 4, 1836, must be administered and certified by the agent who makes the payment, or an accounting officer of the Treasury.—*Vol. 6, p. 195.*

14. When a simple power of attorney is given to draw the money due a pensioner at a certain date, and the pensioner dies before the pension becomes due, the power of attorney is a nullity.—*Vol. 9, p. 541.*

15. The attorneys of Commissioned Officers who are pensioners, and of widows pensioned under the Navy Pension laws, are required to make oath that they have no interest in the money they are authorized to receive, "by any pledge, mortgage, sale or transfer."—*Vol. 11, p. 356.*

16. An attorney of a pensioner may take the required oath before a Notary, when the Notary is by law, authorized to administer oaths in other cases.—*Vol. 14, p. 2.*

17. The term "legal representatives" of a deceased pensioner, as used in the act of March 2, 1829, means the executor of the last will and testament of the deceased pensioner, or the administrator on his estate.—*Vol. 10, p. 428.*

18. Arrears due a deceased pensioner may be paid to the administrator, unless some one or more of the heirs entitled, make known to the pension agent a preference that their shares should be paid without the intervention of an administrator.—*Vol. 8, p. 359.*

19. The Pension Act of 19th June, 1840, was not designed to repeal the act of March 2, 1829, but it does authorize payment to an administrator, notwith-

standing there are children living. Where there are no children living, the law does not apply.—*Vol. 13, p. 28.*

20. The Pension Act of June 19, 1840, provides that the pension shall not be considered as part of the assets of the deceased pensioner's estate, nor liable to be applied to the payment of the debts of said estate; therefore the amount of pension due at the time of the death of a female pensioner may be paid to her children, or to the administrator, for the sole and exclusive benefit of her children, to be distributed among them in equal shares.—*Vol. 12, p. 160.*

21. When the executor or administrator of a deceased pensioner claims payment of the balance of pension due at the time of the death of a pensioner, the certificate of the proper court to the fact of the death will be sufficient, without certifying that there are children living. In the case of a male pensioner, it should appear by the certificate that there is no widow; as, in case of a widow surviving the deceased pensioner, she, and not the executor or administrator, is entitled to the balance.—*Vol. 14, p. 22.*

22. On the death of a pensioner having neither wife nor child, the balance of pension due at the time of his death is not payable to his half-sister, but to the executor or administrator on his estate.—*Vol. 9, p. 637.*

23. The balance of pension due a deceased pensioner at the time of his decease, is payable to the widow only, if she remain unmarried. The children have no legal claim to it, except in case of the death or intermarriage of the widow.—*Vol. 9, p. 26.*

24. A widow claiming arrears of pension due her deceased husband, must prove herself, before a Court of Record, to be the widow of the deceased pensioner, and also take the oath that she is the identical person thus proved to be the widow.—*Vol. 14, p. 19.*

25. Where a widow, pensioned under the act of July 21, 1848, contracts another marriage, the agent must require her pension certificate to be surrendered, on paying her pension to the date of such intermarriage. If she has a child entitled to the reversion of the pension, application must be made, with proper proof to the Commissioner of Pensions, for a new certificate in the name of the child.—*Vol. 13, p. 193.*

26. By the acts of March 2, 1829, and June 19, 1840, the balance due a deceased Revolutionary pensioner, leaving children, but no widow, belongs to the children, and can be paid only to them, or to the executor or administrator, on the estate of the deceased pensioner for their benefit.—*Vol. 11, pp. 16, 244, 190.*

27. A widow pensioner, under the law of July 4, 1836, or July 21, 1848, is entitled to her pension up to the date of her death or intermarriage, if either occur within the five years for which the pension runs; and for the remainder of the time, if any, the pension inures to the child or children under sixteen years of age.—*Vol. 12, p. 344.*

28. On the death of a female pensioner, the balance of pension due at the time of her death is, by law, payable to her children then living.—*Vol. 10, p. 5.*

29. The share due each of the surviving children of a pensioner may be paid to his or her attorney, without the production of the original certificate, or a compliance with the regulation of Sept. 1, 1846.—*Vol. 13, p. 25.*

30. When a pensioner, who is a widow, dies, leaving children, the amount of pension due at the time of her death belongs not to the executor or administrator, but to her surviving children, to be distributed among them in equal shares.—*Vol. 14, p. 38; Vol. 11, p. 104.*

31. Payment of arrears due a deceased pensioner, who left no widow, must always be made to surviving children, if any, and not to representatives of children, who died during the lifetime of the pensioner.—*Vol. 15, p. 426.*

32. Children not being entitled to the pension, except upon the marriage of their mother; proof of her marriage and its date must be filed with their claim.—*Vol. 13, p. 341.*

33. When a child is by law entitled to the balance of pension due a deceased parent, the receipt of the child to the pension agent is deemed sufficient, notwithstanding said child be a *femme covert* at the time of signing the receipt.—*Vol. 11, p. 65.*

34. Where one of the children named in a pension certificate dies unmarried, before the certificate is received, leaving brothers and sisters, the share of pension due him may be paid to the surviving children, without taking out letters of administration.—*Vol. 12, p. 147.*

35. Where one of two or more children named in a pension certificate cannot be found, and a certificate from the proper court is offered as a voucher by the attorney of the other children, affirming that satisfactory evidence has been produced of the death of such child, or that he has been so long absent without having been heard from, as to be considered legally deceased by the laws of the state where he had lived, it will be considered sufficient proof of the right of the surviving children to draw the balance of the pension due.—*Vol. 12, pp. 134, 146.*

36. When several children are embraced in the pension certificate, the oath of identity is not required from all, but only from the one who may be authorized by regular power of attorney from the others to receive the pension money due.—*Vol. 12, p. 87.*

37. A grandchild of a deceased pensioner cannot, in any case, claim to receive the arrears of pension due the pensioner at the time of his death. If no widow or children survive the pensioner, payment must be made to the executor or administrator.—*Vol. 14, pp. 41, 344.*

38. At the death of the ward, the powers of the guardian cease. The balance of pension, therefore, due a pensioner who was under guardianship at the time of his decease, is not payable to the guardian.—*Vol. 8, p. 65.*

39. Whenever a navy pension has been unclaimed for two years, the application of the pensioner, and all the documents in support of his claims must be referred to the fourth auditor of the Treasury for investigation.—*Vol. 8, p. 22.*

40. Where an invalid pensioner's name has been continued on the rolls, and for a series of years he has not claimed the pension at the agency by producing the required proof of continued disability, and afterward produces that proof and claims under the original certificate, payment should be made at the Treasury. But if his name was stricken from the rolls of the agency so that he could not obtain his pension by applying there with the proper proof, and is to receive it by virtue of a new order from the Department, he should be paid at the agency.—*Vol. 14, p. 63.*

41. The pension agent may, if he thinks proper, require the attorney to receive the money at the office of the agency, though if it were paid on receipts executed elsewhere, the voucher would not be objectionable on that account.—*Vol. 14, p. 221.*

42. The regulations for paying pensions require that the certificate shall be set out in the application, and that the applicant shall make oath that he is the identical person named in that certificate.—*Vol. 13, p. 123.*

43. In cases where there is no county court seal, the pension agent will not reject vouchers for lack of the seal alone, but he will require the certificate of the clerk that there is no seal.—*Dec. Sep. 1846.*

44. A pensioner residing in Canada may execute his papers before a justice of the peace in the vicinity of his residence, if he is too feeble to cross over to the United States to have his papers authenticated.—*Vol. 14, p. 125.*

45. Where a pensioner neither signs nor makes his mark to vouchers requiring his signature, the pension agent is not authorized to pay the money.—*Vol. 12, p. 509.*

46. Pension agents may administer all the necessary oaths in the preparation of papers for the payment of pensions. By the act of February 19th, 1849, sec. 3, the deputies and clerks of pension agents have the same power as the agents to administer oaths.—*Vol. 12, p. 219.*

47. Notaries Public are not considered as authorized *ex-officio*, to administer oaths in the preparation of pension papers, but if the general authority to administer oaths has been conferred upon them by the statute laws of the particular state in which they reside and are commissioned, the oaths taken before them would be valid and of course respected by the pension agents. It should,

however, be shown that such authority exists under the law of the state.—*Vol. 12, pp. 1, 83. Sept. 9, 1847.*

48. It is required by the proviso in the first section of the act of September 16th, 1850, chap. 52, that the official character of a notary shall be established by other evidence than his seal and signature. The proviso in the first section applies only to cases where the notary has certified that oaths or affirmations were taken before him, and not to certificates of acknowledgement of instruments.—*Vol. 14, p. 111.*

49. A pension agent must require that the certificates should be set out in the oath of identity.—*Vol. 13, p. 21.*

50. The omission of the words "duly authorized by law to administer oaths" from the oath of identity or acknowledgment of the power of attorney in the pension papers, is not so important as to render it necessary to reject the papers on that account.—*Vol. 11, pp. 404, 423, 437.*

51. By the act of the General Assembly of the state of Ohio, passed March 22, 1849, notaries are authorized to administer oaths in all cases where an oath is required in the execution of papers to draw pensions at the pension agencies or at the Treasury of the United States.—*Vol. 14, p. 62.*

52. That section of the pension instructions which requires a witness to pension vouchers where the pensioner or attorney of a pensioner subscribes by a mark in consequence of inability to write, applies to the oath of identity as well as to every other necessary voucher. In all cases, therefore, a witness is required, other than, and in addition to the magistrates before whom the affidavit is made.—*Vol. 12, p. 85.*

53. A power of attorney to draw a pension must be dated and acknowledged on, or subsequent to the day on which the pension becomes due.—*Vol. 14, pp. 228, 430 : Vol. 13, pp. 123, 287, 291.*

54. When interlineations and additions are made in a power of attorney to draw a pension, they must be noted by the magistrate.—*Vol. 6, p. 44.*

55. When a pensioner receives from the pension agent a greater sum than was his due, the excess should stand to his debit, and be considered as so much paid, and no further payment should be made until something shall become due, after deducting the sum so over paid.—*Vol. 8, pp. 222, 421.*

56. A power of attorney to draw a pension is not vitiated in consequence of its giving authority to draw for a time antecedent to that from which the pension is due.—*Vol. 14, p. 88.*

57. If the pension agent pay to the attorney more money than the pensioner authorized the attorney to receive, the pensioner is not legally accountable for the excess unless it be shown that he received such excess, or sanctioned the act of the attorney in so receiving it.—*Vol. 8, p. 438.*

58. On the application of a guardian for the payment of a pension due his wards, he must furnish proof that they are still living, are under twenty-one years of age, and that he still continues to be their guardian.—*Vol. 8, p. 25.*

#### FORM WHERE ARREARS ARE DUE, AND CERTIFICATE TO BE SURRENDERED.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT KNOWN, That before me, ....., a Justice of the Peace, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared....., and made oath in due form of law, that he is the identical person named in an original certificate, dated at the Department of the Interior on the.....day of....., A D. 18.., and to be herewith surrendered, and of which the following is a copy, viz :

(Here copy certificate at length.)

that....now resides in....., and has resided there for the space of....

.... years past ; and that previous thereto....resided in..... ; of the truth of which statement I am fully satisfied. ....

WITNESS .....

SWORN TO AND SUBSCRIBED before me, this.... }  
day of....., A.D., 18.. }  
....., J. P.

KNOW ALL MEN BY THESE PRESENTS, That....., of....., do hereby constitute and appoint..... true and lawful attorney, for....., and in..... name, to receive from the agent of the United States for paying pensions in....., State of....., from the..... day of....., 18., to the..... day of....., 18..

Witness..... hand and seal, this..... day of....., 18..

Scaled and delivered in presence of

WITNESS : .....  
WITNESS : ..... [SEAL.]

STATE OF..... }  
COUNTY OF..... } ss.

BE IT KNOWN, That on..... day of....., 18., before the subscriber, a Justice of the Peace in and for said county, personally appeared....., above named, and acknowledged the foregoing power of attorney to be..... act and deed. In testimony whereof, I have hereunto set my hand the day and year last above mentioned.

....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT KNOWN, That on the..... day of....., 18., before me, a....., duly authorized, by the laws of the State, to administer oaths, personally appeared....., the attorney named in the foregoing power of attorney, and made oath that he has no interest whatever in the money he is authorized to receive by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

SWORN AND SUBSCRIBED the day and year last }  
above mentioned, before me, }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } to wit :

I HEREBY CERTIFY, That....., Esq., before whom the foregoing declaration and power of attorney were made, and who has thereto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of the..... for the county aforesaid, this..... day of....., 18..

....., Clerk.



## INVALID PENSIONERS.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That before me, ....., a Justice of the Peace, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared....., and made oath in due form of law, that he is the identical person named in an original certificate in his possession, of which (I certify) the following is a true copy:

*(Here insert a copy of his certificate of pension,)*

That..... now resides in..... and has resided there for the space of.... years past; and that previous thereto he resided in....., and that he has not been employed, or paid, in the army, navy, or marine service of the United States from the..... day of....., 18.., to the..... day of....., 18.., of the truth of which statement I am fully satisfied.

WITNESS : .....

SWORN TO AND SUBSCRIBED before me, this.... }  
day of....., A.D., 18... }  
....., J. P.

STATE OF..... } ss.  
COUNTY OF..... }

I, ....., a Magistrate in the county above named, do hereby certify, that I have the most satisfactory evidence, viz :

*(State nature of evidence.)*

that....., who has this day appeared before me to take the oath of identity, is the identical person named in the pension certificate, which he has exhibited before me, numbered..... and bearing date at the Department of the Interior, the..... day of....., 18.., and signed by....., Secretary of the Interior.

Given under my hand at....., on the day }  
and year above written. }  
....., J. P.

KNOW ALL MEN BY THESE PRESENTS, That....., of....., an invalid pensioner, ..... do hereby constitute and appoint..... true and lawful attorney, for....., and in..... name, to receive from the agent of the United States for paying pensions in..... State of....., my pension from the..... day of....., 18.. to the..... day of....., 18..

Witness my hand and seal, this..... day of....., 18..

Sealed and delivered in presence of

WITNESS : .....  
WITNESS : .....

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on the..... day of....., 18.., before the subscriber, a Justice of the Peace in and for said county, personally appeared....., above named, and acknowledged the foregoing power of attorney to be..... act and deed. In testimony whereof, I have hereunto set my hand the day and year last above mentioned.

....., J. P.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on the..... day of....., 18.., before me, a....., duly authorized by the laws of the State, to administer oaths, personally appeared....., the attorney named in the foregoing power of at-

torney, and made oath that he has no interest whatever in the money he is authorized to receive by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

SWORN AND SUBSCRIBED the day and year last }  
above mentioned, before me, }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } to wit:

I HEREBY CERTIFY, That....., Esq., before whom the foregoing declaration and power of attorney were made, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto, is genuine.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of the..... for the county aforesaid, this..... day of..... 18...

....., Clerk.

## REVOLUTIONARY PENSIONERS.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That before me, ....., a Justice of the Peace, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared ....., and made oath in due form of law, that he is the identical person named in an original certificate in his possession, of which (I certify) the following is a true copy:

(Here insert a copy of the certificate.)

that he now resides in ....., and has resided there for the space of ..... years past; and that previous thereto he resided in ....., of the truth of which statement I am fully satisfied.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, this.... }  
day of ....., A.D., 18... }

....., J. P.

KNOW ALL MEN BY THESE PRESENTS, That ....., of ....., a revolutionary pensioner..... do hereby constitute and appoint..... true and lawful attorney, for ....., and in..... name, to receive from the agent of the United States for paying pensions in ....., State of ....., pension from the..... day of ....., 18.., to the..... day of ....., 18...

Witness..... hand and seal, this..... day of ....., 18...

Scaled and delivered in presence of

WITNESS :.....

WITNESS :.....

[SEAL.]

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on..... day of ....., 18.., before the subscriber, a Justice of the Peace in and for said county, personally appeared....., above named, and acknowledged the foregoing power of attorney to be his act and deed. In testimony whereof, I have hereunto set my hand the day and year last above mentioned.

....., J. P.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on the..... day of ....., 18.., before me, a....., duly authorized by the laws of the State, to administer oaths, personally appeared ....., the attorney named in the foregoing power of attorney, and made oath that he has no interest whatever in the money he is authorized to receive by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment or transfer, and that he does not know or believe that the same has been so disposed of by any person whatever.

SWORN AND SUBSCRIBED the day and year last }  
above mentioned, before me. }

....., J. P.

STATE OF..... } to wit:  
COUNTY OF..... }

I HEREBY CERTIFY, That....., Esq., before whom the foregoing declaration and power of attorney were made, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of the....., for the county aforesaid, this..... day of ....., 18..

....., Clerk.

## WIDOWS' APPLICATION.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That before me, ....., a Justice of the Peace, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared....., widow of....., and made oath in due form of law, that she is the identical person named in an original certificate in her possession, of which (I certify) the following is a true copy :

(Here insert a copy of her certificate of pension.)

that she has not intermarried, but continues the widow of the above mentioned ....., and that she now resides in....., and has resided there for the space of..... years past ; and that previous thereto she resided in.... ; of the truth of which statement I am fully satisfied.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, this.... }  
day of..... A.D. 18... }

....., J. P.

KNOW ALL MEN BY THESE PRESENTS, That....., of....., a revolutionary pensioner, do hereby constitute and appoint....., true and lawful attorney, for....., and in..... name, to receive from the agent of the United States for paying pensions in....., State of....., my pension from the.... day of....., 18., to the.... day of..... 18....

Witness..... hand and seal, this.... day of....., 18....

Sealed and delivered in presence of

WITNESS :.....

WITNESS :.....

[SEAL.]

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on..... day of....., 18., before the subscriber, a Justice of the Peace in and for said county, personally appeared....., above named, and acknowledged the foregoing power of attorney to be..... act and deed. In testimony whereof, I have hereunto set my hand the day and year last above mentioned.

....., J. P.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT KNOWN, That on the.... day of....., 18., before me, a....., duly authorized, by the laws of the State, to administer oaths, personally appeared....., the attorney named in the foregoing power of attorney, and made oath that he has no interest whatever in the money he is authorized to receive by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of to any person whatever.

SWORN AND SUBSCRIBED, the day and year last }  
above mentioned, before me.

..... J. P.

STATE OF..... } to wit:  
COUNTY OF..... }

I HEREBY CERTIFY, That....., Esq., before whom the foregoing declaration and power of attorney were made, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the

county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto signed my name and  
affixed the seal of....., for the County aforesaid, this.....  
day of.....18..

....., *Clerk.*

## GUARDIAN'S APPLICATION.

STATE OF ..... } ss.  
COUNTY OF .....

BE IT KNOWN, That, before me, ....., a Justice of the Peace, in and for the county aforesaid, duly authorized by law to administer oaths, personally appeared ....., guardian of ....., and made oath in due form of law, that the said ..... is still living, and is the identical person named in an original certificate in his possession, of which (I certify) the following is a true copy :

(Here insert a copy of the certificate.)

that ..... now resides in ..... and has resided there for the space of .... years past : and that previous thereto ..... resided in ..... ; of the truth of which statement I am fully satisfied.

WITNESS : .....

....., Guardian.

SWORN TO AND SUBSCRIBED before me, this .... }  
..... day of ....., A.D., 18.. }  
....., J. P.

KNOW ALL MEN BY THESE PRESENTS, That ..... of ....., guardian of ....., do hereby constitute and appoint ..... my true and lawful attorney, for ....., and in ..... name, to receive from the agent of the pension of ..... from the ..... day of ....., 18.., to the ..... day of ..... the United States for paying pensions in ....., State of ....., 18...

Witness ..... hand, and seal, this ..... day of ....., 18...

Sealed and delivered in presence of

WITNESS : .....  
WITNESS : ..... [SEAL,]

STATE OF ..... } ss.  
COUNTY OF .....

BE IT KNOWN. That on the ..... day of ....., 18.., before the subscriber, a Justice of the Peace in and for said county, personally appeared ....., above named, and acknowledged the foregoing power of attorney to be ..... act and deed. In testimony whereof, I have hereunto set my hand the day and year last above mentioned.

....., J. P.

STATE OF ..... } ss.  
COUNTY OF .....

BE IT KNOWN, That on the ..... day of ....., 18.. before me, a ..... duly authorized, by the laws of the State, to administer oaths, personally appeared ..... the attorney named in the foregoing power of attorney, and made oath that he has no interest whatever in the money he is authorized to receive by virtue of the foregoing power of attorney, either by any pledge, mortgage, sale, assignment, or transfer, and that he does not know or believe that the same has been so disposed of by any person whatever.

SWORN AND SUBSCRIBED the day and year last }  
above mentioned, before me. }

....., J. P.

STATE OF ..... } to-wit:  
COUNTY OF .....

I HEREBY CERTIFY, that ....., Esq., before whom the foregoing declaration and power of attorney were made, and who has thereunto subscribed his name, was at the time of so doing, a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signa-

ture thereto is genuine, and that ..... is guardian of....., duly qualified to act as such.

IN TESTIMONY WHEREOF, I have hereunto signed my name and affixed the seal of the....., for the county aforesaid, this..... day of....., 18..

....., Clerk.

### DECEASED PENSIONERS.

#### FORM OF APPLICATION FOR THE WIDOW OR CHILD OF A DECEASED PENSIONER.

In case the pension has been due and unclaimed for *fourteen* months, the application should be presented to the third auditor of the Treasury; if less than fourteen months, at the agency where the certificate is made payable.

STATE OF..... }  
.....COUNTY, }

BE IT KNOWN, That before me, ....., a ....., in and for the County aforesaid, duly authorized by law to administer oaths, personally appeared....., and made oath in due form of law, that she (or he, as the case may be) is the widow (or son, or daughter, as the case may be) of ....., the identical person who was a pensioner, and is now dead, and to whom a certificate of pension was issued, which is herewith surrendered.\*

That the deceased pensioner resided in ....., in the State of ....., for the space of..... years before his death; and that previous thereto he resided in .....

SWORN AND SUBSCRIBED this..... day {  
of.....18....., before me, ..... }  
..... J. P.

NOTE.—The above deposition must be signed by the deponent. Where the pension has been increased, since the certificate has been given, the magistrate will note the fact.

The oath of identity for the Executor or Administrator of a deceased pensioner may be in the foregoing form—substituting “Executor” (or “Administrator,” as the case may be) for “widow,” etc.

#### POWER OF ATTORNEY FOR THE WIDOW OR CHILD OF A DECEASED PENSIONER.

KNOW ALL MEN BY THESE PRESENTS, That I, ..... of..... in the county of....., State of....., widow (or child, as the case may be,) of....., who was † ..... pensioner of the United States, do hereby constitute and appoint..... my true and lawful attorney, for me, and in my name, to receive from the agent of the United States for paying pensions in..... State of..... the balance of said pension

\* In case the pension certificate has been lost, insert, immediately after the name, or names, of the widow, child, or children, as the case may be, the following: “And that the pension certificate of said pensioner has been lost, and, after due search and inquiry therefor, it cannot be found.”

† In this blank insert the word Invalid, or Revolutionary, as the case may be.

from the ..... day of ....., 18...., to the ..... day of .....,  
being the day of his death.

Witness my hand and seal, this ..... day of ....., 18....

Sealed and delivered in presence of .....

WITNESS : .....

WITNESS : .....

[SEAL.]

NOTE.—When one of the children is appointed by the others to receive the balance, the Attorney's oath is not required.

CERTIFICATE OF THE COURT AS TO THE DEATH OF A PENSIONER.

STATE OF ..... }  
COUNTY OF ..... } ss.

I, ..... Clerk of the Court of ....., holden at ....., in and for  
..... do hereby certify, that satisfactory evidence has been exhibited to  
said Court that ..... was a pensioner of the United States at the rate of  
..... dollars per ..... ; was a resident of the County of ....., in the State  
of ..... and died in the ....., in the State of ....., in the year  
....., on the ..... day of ..... ; that he left a widow [or no  
widow] (or child or children, as the case may be) whose name is (or are, as the  
case may be.)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my  
seal [SEAL OF THE COURT.] ..... of office at ....., this .....  
day of ....., in the year of our Lord 18....  
....., Clerk of the .....



## APPLICATION FOR A NEW CERTIFICATE.

STATE OF..... } ss.  
COUNTY OF..... }

On this..... day of....., A. D. 185., before me the subscriber, a Justice of the Peace in and for the said county of....., personally appeared....., who, on his oath, declares that he is the same person who formerly belonged to the company commanded by Captain....., in the regiment commanded by Colonel....., in the service of the United States; that his name was placed on the pension roll of the State of..... that he received a *certificate of that fact under the signature and seal of the Secretary of War,\** (or Secretary of the Interior;) which certificate on or about the..... day of..... 185., at or near.....  
(Here state the time, place, and manner of the loss or destruction of the certificate.)

SWORN TO AND SUBSCRIBED before me, this..... }  
day of....., A.D. 185.. }  
..... J. P.

STATE OF..... } ss.  
COUNTY OF..... }  
TOWN OF..... }

On this..... day of....., A.D. 18.., before me, the subscriber a..... in and for said County, duly authorized to administer oaths, personally came....., aged..... years, and....., aged..... years, whom I know to be residents of the County and State aforesaid, and persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw..... execute the foregoing affidavit by..... to the foregoing declaration, and making oath thereto in due form of law, and they further swear that they are acquainted with said..... now present, and that he is the identical person he represents himself to be; and further, that they, deponents, do reside in the County aforesaid.

WITNESS,.....

SWORN TO AND SUBSCRIBED before me, this..... }  
day of..... A.D. 18.. and I certify that I have }  
no interest in this case as attorney. or otherwise. }  
..... J. P.

STATE OF..... } ss.  
COUNTY OF..... }

I HEREBY CERTIFY, that..... Esq., before whom the foregoing Declaration and Power of Attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... Court, for the County aforesaid, this..... day of..... 18....

..... Clerk.

The oath to be taken before a duly qualified magistrate, whose official character and signature must be properly authenticated.

\* If the pensioner has never received a formal certificate, but has drawn his pension on a mere notification, as was the case in a few instances many years ago, he should leave out the above words in *Italics*, and insert in lieu thereof, "*but has never received a formal certificate, and now wishes to obtain one.*"

The pensioner's oath must be supported by the evidence of another person as to identity. The person must swear that he well knows him to be the same person described in the above affidavit. The magistrate must certify that the deponent is a person of veracity. This oath must also be authenticated by the certificate of the proper officer, under his seal of office, setting forth that the officer before whom the affidavit may be made is a Justice of the Peace, Judge, or Notary Public, as the case may be.

When a person acting as an Agent or Attorney for a Pensioner loses the certificate, the affidavit of that person is also required, which must be authenticated as above.

In every case where the Clerk of the Court, or other certifying officer, has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should be sent with the papers.

*Mode of authenticating papers.*—In every instance where the certificate of the certifying officer who authenticates the papers is not written on the same sheet which contains the affidavit, or other paper authenticated, the certificate must be attached thereto by a piece of tape or small ribbon, the ends of which must pass under the seal of office, so as to prevent any paper from being improperly attached to the certificate.

No attention will be given to applications from persons who act as agents, unless they are known at the Department or are vouched for as respectable persons by some one who is known to the Department.

## APPLICATION WHERE A PENSION CERTIFICATE IS ILLEGALLY WITHHELD.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT KNOWN, that before me,....., a Justice of the Peace in and for the county aforesaid, personally appeared....., and made oath, in due form of law, that he is the identical..... named in an original certificate now illegally withheld by.....  
[Here state the facts respecting the detention of the pension certificate.]  
that he is entitled to a pension of.....dollars per month on account of the wounds and disabilities received, or of services rendered to the United States during the.....war; that he served in Captain.....'s company of....., in the.....regiment; that he now resides in....., and has resided there for the space of.....years past: and that, previous thereto, he resided, in.....

SWORN TO AND SUBSCRIBED this.....day }  
of....., 18..... }  
....., J. P.

### CERTIFICATE OF THE OFFICER WHO ADMINISTERS THE OATH.

STATE OF..... }  
COUNTY OF..... } ss.

Conformably to the regulations of the War Department of October, 27th, 1832, I,....., a magistrate in the county above named, do hereby certify that I have the most satisfactory evidence, viz: .....  
[Here state the evidence of identity, whether personal knowledge, or the affidavit of respectable persons.]

that..... who this day appeared before me to take the oath of identity, is the identical pensioner he declares himself to be in the annexed affidavit; and I am also satisfied that the statement made by him in relation to the pension certificate is true.

Given under my hand at....., the }  
day and year above written. }  
..... J. P.

### CERTIFICATE AND SEAL OF THE CLERK OF THE COURT.

I,..... clerk of the court of..... county, certify that..... is a magistrate as above, and that the foregoing certificate, purporting to be his, is genuine.

IN TESTIMONY WHEREOF I have hereunto affixed my seal of office, and subscribed my name, this.....day of....., in the year.....

[I. s.] ..... Clerk of the Court of..... County.

The pensioner must state, in its place in the affidavit above, the amount of pension to which he is now entitled, which, in some cases, varies from that in the original certificate; and he must sign and make oath to the affidavit.

The oath may be administered by any officer properly qualified to take an affidavit.

Such officer will state, in the place indicated in his certificate above, the evidence of the identity of the affiant or pensioner: whether personal knowledge, or the affidavits of respectable persons—giving their names.

## TRANSFER OF PENSIONS.

A pensioner desirous of having his pension transferred to another agency, must make his application according to the subjoined form.

The oath of the applicant must be taken before a duly qualified magistrate, whose official character and signature must be certified by the proper officer, under his seal of office. The county clerk, secretary of State, or some other officer, will certify under his seal of office, that the officer who administered the oath is a justice of the peace, judge, mayor, alderman, or notary public, (as the case may be,) and that the signature purporting to be his is genuine.

The oath must be supported by the testimony of some respectable person, as to the pensioner's identity. He must swear that the person who has taken the oath is the person described in the affidavit. The magistrate must certify that the witness is a person of veracity, and the affidavit must also be authenticated in the manner above directed.

In every case where the clerk of the court, or other certifying officer, has no public seal of office, the certificate of a member of Congress, proving the official character and signature of the certifying officer, should be sent with the papers.

## FORM OF APPLICATION FOR A TRANSFER OF PENSION.

COUNTY OF....., ss:

On this.....day of....., 18...., before me, the subscriber, a justice of the peace for the said county of....., personally appeared....., who, on his oath, declares that he is the same person who formerly belonged to the company commanded by Captain....., in the regiment commanded by Colonel....., in the service of the United States; that his name was placed on the pension roll of the State of....., from whence he has lately removed; that he now resides in the State [District or Territory] of....., where he intends to remain, and wishes his pension to be there payable in future. The following are his reasons for removing from.....to.....

SWORN AND SUBSCRIBED to before me, the day }  
and year aforesaid. }  
.....J. P.

STATE OF..... }  
COUNTY OF..... } ss.  
TOWN OF..... }

On this.....day of.....A.D. 18...., before me, the subscriber, a....., in and for said County, duly authorized to administer oaths, personally came....., aged.....years, and.....aged.....years, whom I know to be residents of the County and State aforesaid, and persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw.....execute the foregoing affidavit by.....to the foregoing declaration, and making

oath thereto in due form of law, and they further swear that they are acquainted with the said ..... now present, and that he is the identical person he represents himself to be ; and further, that they, deponents, do reside in the County aforesaid. ....

WITNESS.....

SWORN TO AND SUBSCRIBED before me, this.....day of.....A.D. 18.... and I certify that I have no interest in this case, nor am I concerned in its prosecution.

....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY that ....., Esq., before whom the foregoing Declaration and Power of Attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of ..... Court, for the County aforesaid, this ..... day of ..... 185 .....

..... Clerk of .....

## POWER OF ATTORNEY TO EXAMINE PAPERS

FILED IN THE PENSION OFFICE.

*Department of the Interior,*  
PENSION OFFICE, April 18, 1851.

*The following rules and regulations, approved by the Secretary of the Interior, will be observed in the settlement of pension claims against the Government:*

1. An agent or attorney asking to examine papers filed in any pension claim, or for the reconsideration of a claim heretofore adjudicated, must produce a power of attorney giving him the necessary authority to act as agent of the claim, which power of attorney must be acknowledged before a justice of the peace or other person qualified to take acknowledgments or administer oaths, and must be certified under a recognized official seal. The party moreover executing such power must have taken an oath that he or she is directly interested as one of the claimants, and a certificate to that effect must accompany the power.

2. On the presentation of such authority, the Commissioner will, in his discretion, furnish an abstract of the proofs appearing in the papers filed, or permit a personal inspection of such papers.

3. Upon the presentation of the power, as required in the first rule, if it appear that the original party performing the alleged service, or his widow, is the applicant for the reconsideration of a claim heretofore adjudicated, such claim may be re-examined as a matter of right, but there shall not be more than two re-examinations without the production of further material evidence.

4. In other cases than those of the person performing service, or his widow, as prescribed in the 3d rule next preceding, no pension case which has been finally adjudicated shall be re-opened, unless on the production of satisfactory proof that the adjudication was erroneous, accompanied by an affidavit of the party applying therefor, showing that such proof has been discovered since the adjudication was made.

5. Appeals may be taken from the decisions of the Commissioner of Pensions within six months from the time the decision is made and communicated to the party or his agent.

6. No application for a re-hearing will be entertained after the expiration of two years from the final adjudication of a

claim and notice thereof to the applicant or his agent. After that time the party will be left to seek redress by an appeal to Congress.

J. E. HEATH,

*Commissioner of Pensions.*

KNOW ALL MEN BY THESE PRESENTS, That I, ....., hereby constitute and appoint....., my true and lawful agent and attorney, to prosecute the claim of..... for any amount of revolutionary pension, or increase of pension, that may be due; and I hereby authorize my said agent to examine all the papers and documents in relation to said claim, on file in the Departments at Washington City, or elsewhere; to file additional evidence or arguments; and to receive the certificate which may be issued for said claim, which certificate I wish made payable to.....; to appoint one or more substitutes under him for the purpose herein expressed; and to do all things that I might or could do were I personally present. Hereby ratifying and confirming all that my said attorney and agent shall lawfully do in the premises.

Witness my hand and seal, this.....day of....., A.D. 18...

SIGNED AND SEALED IN THE PRESENCE OF }

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of....., A.D. 185....; before me, the subscriber, a Justice of the Peace in and for the County aforesaid, personally appeared....., and acknowledged the foregoing Power of Attorney to be.....act and deed, for the purposes therein mentioned.

IN TESTIMONY WHEREOF, I hereunto set my hand, the day and year aforesaid. J. P.

I....., Clerk of the.....Court in the County and State aforesaid, do hereby certify that....., before whom the foregoing papers were executed, was at the date of the same, a Justice of the Peace in and for said County, duly authorized by law to administer oaths; and the name thereunto subscribed, is.....signature.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official Seal, this.....day of.....A.D., 18....  
....., Clerk.

## PART II.

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# BOUNTY LANDS.

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## BOUNTY LANDS

FOR SERVICES IN THE WAR OF THE REVOLUTION.

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The following Resolutions stipulating grants of land to certain officers and soldiers of the Continental army, were adopted during the Revolutionary war, and are taken from the Journals of Congress. There are also others relative to lands tendered to Nova Scotia exiles and other foreigners, which being obsolete, it is not deemed necessary to recite.





BOUNTY LANDS.—REVOLUTIONARY WAR.

To provide for the raising of eighty-eight battalions to serve for the war.

RESOLUTION—IN CONGRESS, SEPTEMBER 16, 1776.

*Resolved*, That, in addition to a money bounty of twenty dollars to each non-commissioned officer and private soldier, Congress make provision for granting lands, in the following proportions, to the officers and soldiers *who shall engage in the service, and continue therein to the close of the war, or until discharged by Congress*, and the representatives of such officers and soldiers as shall be slain by the enemy. Such lands to be provided by the United States, and whatever expense shall be necessary to procure such land, the said expense shall be paid and borne by the [United] States, in the same proportion as the other expenses of the war, viz: to a colonel, five hundred acres; to a lieutenant-colonel, four hundred and fifty acres; to a major, four hundred acres; to a captain, three hundred acres; to a lieutenant, two hundred acres; to an ensign, one hundred and fifty acres; each non-commissioned officer and soldier, one hundred acres.

RESOLUTION—IN CONGRESS, SEPTEMBER 18, 1776.

*Resolved*, That the bounty and grants of land offered by Congress, by a resolution of the 16th instant, as an encouragement to the officers and soldiers to engage to serve in the army of the United States during the war, shall extend to all who are, or shall be, enlisted for that term; the bounty of ten dollars, which any of the soldiers have received from the continent on account of a former enlistment, to be reckoned in part payment of the twenty dollars offered by the said resolution: that no officer in the continental army be allowed to hold more than one commission, or to receive pay but in one capacity, at the same time.

RESOLUTION—IN CONGRESS, AUGUST 12, 1780.

*Resolved*, That the provision for granting lands, by the resolution of September-sixteenth, one thousand seven hundred and seventy-six, be, and is hereby, extended to the general officers, in the following proportion: to a major-general, one thousand one hundred acres; to a brigadier-general, eight hundred and fifty acres.

## RESOLUTION—IN CONGRESS, SEPTEMBER 22, 1780.

Congress resumed the consideration of the report of the committee on the Medical Department; and, on the consideration of the following, it was

*Resolved*, That the several officers of the Medical Department, except the clerks and stewards, shall, at the end of the war, be entitled to a certain provision of land, in the proportion following, to wit: The director to have the same quantity as a brigadier-general; chief physicians and purveyor the same as a colonel; physicians and surgeons, and apothecary, the same as a lieutenant-colonel; regimental surgeons and assistants to the purveyor and apothecary, the same as a major; hospital and regimental surgeons' mates, the same as a captain.

## RESOLUTION—IN CONGRESS, OCTOBER 3, 1780.

And whereas, by the foregoing arrangement for reducing and regulating the army, many deserving officers must become supernumerary, and it is proper that regard be had to them:

*Resolved*, That from the time the reform of the army takes place, they be entitled to half-pay for seven years, in specie or other current money equivalent, and also grants of land at the close of the war, agreeably to the resolution of the 16th of September, 1776.

## REGULATIONS

For the officers and soldiers of the revolutionary war who acquired a right to land from the United States, but have not received it.

By an act of Congress of the 16th September, 1776, it is provided, that the officers and soldiers of the army on the continental establishment, who engaged for, and continued to serve, during the war, or until discharged by Congress, shall receive land in proportion to their rank.

☞ Those who engaged for three years, or for any other period than during the war, are not entitled to land from the United States.

The following declaration must be filled up and sworn to by the claimant:

## DECLARATION AND POWER OF ATTORNEY OF A REVOLUTIONARY OFFICER OR SOLDIER FOR BOUNTY LAND.

STATE OF..... } ss.  
COUNTY OF..... }

I, ....., aged..... years, do upon oath testify and declare, that I entered the service of the United States on the..... day of....., in the year 17.., for the term of....., and that I served in the company com-

manded by....., in the regiment No....., commanded by....., of the..... line, and was honorably discharged on....., in the year 17.., from the regiment commanded by..... I further declare, that I have never received a warrant for the bounty land promised to me on the part of the United States, nor have I ever assigned or transferred my claim in any manner whatsoever : therefore,

KNOW ALL MEN BY THESE PRESENTS. That I, ....., aforesaid, do hereby constitute and appoint..... to be my true and lawful attorney, for me and in my name to demand and receive from the Secretary of War of the United States, a warrant for the quantity of land due to me as aforesaid ; and my said attorney is hereby fully authorized and empowered to constitute and appoint one or more substitutes or attorneys under him for the special purpose above expressed.

Attest, .....

[*Affidavit of witness.*]

I, ....., aged..... years, do upon oath declare, that I have been long acquainted with....., who has subscribed the above declaration in my presence, and well know that he is the identical person he therein represents himself to be ; and further, I do believe that he did perform the military service therein stated.

Attest, .....

[*Certificate of Justice of the Peace.*]

Before me, ....., personally appeared the above named....., subscriber to the foregoing declaration, and in my presence, acknowledged the power of attorney thereto subjoined, to be his free act and deed ; and, likewise, personally appeared, ....., who hath subscribed the above certificate of identity, both to me well known to be men of respectability and truth, and made solemn oath to the truth of the depositions by them respectively subscribed, this..... day of....., 18...

....., J. P.

[*Certificate of Clerk of Court.*]

IN TESTIMONY that the above written..... was a magistrate authorized to administer oaths, and take acknowledgments, etc., in the State of....., at the above date, and that his name there subscribed appears to me to be his usual signature, I have hereunto affixed the county seal, and subscribed my name and quality, at....., this..... day of....., 18...

[L. s.]

....., Clerk.

REGULATIONS

For the heirs or representatives of officers and soldiers of the revolutionary army who were slain by the enemy, or who have died since the war, and have not received land from the United States.

By an act of Congress of the 16th September, 1776, it is provided that the officers and soldiers who engaged for, and continued to serve during the war, or until discharged by Congress, and the heirs ["the representatives"] of such officers and soldiers as shall be slain by the enemy, shall receive land in proportion to their rank.

☞ Those who engaged for three years, or for any other period than during the war, or who died of sickness, fatigue, or casualty, are not entitled to land from the United States.

The following declaration must be filled up and signed by the proper authorities :

DECLARATION AND POWER OF ATTORNEY OF AN HEIR OF A  
REVOLUTIONARY OFFICER OR SOLDIER FOR BOUNTY LAND.

STATE OF..... } ss.  
COUNTY OF..... }

I,....., heir at law....., do, upon oath, testify and declare, to the best of my knowledge and belief, that..... did enter the service in 17...., for the term of....., and served as a..... in the regiment No....., under the command of Colonel....., of the..... line: and that he continued in the service aforesaid until.....

I further declare that I have never received a warrant for the bounty land promised to..... on the part of the United States; nor do I believe that he ever received it, or transferred his claim to it in any manner whatsoever; therefore,

KNOW ALL MEN BY THESE PRESENTS, That I,..... aforesaid, do hereby constitute and appoint..... to be my true and lawful attorney, for me and in my name to demand and receive from the Secretary of War of the United States, a warrant for the quantity of land due to me as aforesaid; and my said attorney is hereby fully authorized and empowered to constitute and appoint one or more substitutes or attorneys under him, for the special purpose above expressed.

Attest.....

[Certificate of Justice of the Peace.]

Personally appeared the above named..... subscribed to the foregoing declaration, and made oath to the same, and in my presence acknowledged the power of attorney thereto subjoined to be..... free act and deed, for the purposes therein mentioned.

Attest.....

....., J.P.

[Certificate of Clerk of Court.]

IN TESTIMONY that the above written..... was a magistrate authorized to administer oaths, and take acknowledgments, etc., in the State of..... at the above date, and that his name there subscribed appears to me to be his usual signature, I have hereunto affixed the county seal, and subscribed my name and quality, at..... this..... day of..... 18....

[L. S.]

....., Clerk of Court.

STATE OF.....

At a court held for..... county,..... 18.... satisfactory evidence was adduced in court to prove that.....

[Filled up according to the facts.]

and..... heir-at-law in fee to..... late a..... in the..... regiment..... [of the Continental or State line.]

I,....., Clerk of the county court, do certify, that the above evidence is taken from the records in my office.

IN TESTIMONY whereof I have hereunto affixed my official seal, this..... day of..... 18....

[L. S.]

..... Clerk of Court.

## **BOUNTY LAND.**

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**MILITARY ESTABLISHMENT.—WAR OF 1812.**

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Bounty Land for non-commissioned officers and soldiers of the war with Great Britain, declared by the United States, on the 18th June, 1812, who enlisted "for the war," or "for five years."

## BOUNTY LANDS.—MILITARY ESTABLISHMENT.

AN ACT for completing the existing military establishment.

APPROVED, DECEMBER 24, 1811.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the military establishment, as now authorized by law, be immediately completed.

SEC. 2. *And be it further enacted, That* there be allowed and paid to each effective, able-bodied man, recruited or re-enlisted for that service, for the term of five years, unless sooner discharged, the sum of sixteen dollars; but the payment of one-half of the said bounty shall be deferred until he shall be mustered and have joined the corps in which he is to serve; and whenever any non-commissioned officer or soldier shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall, moreover, be allowed and paid, in addition to the aforesaid bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers, who may be killed in action, or die in the service of the United States, shall, likewise, be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land, to be designated, surveyed, and laid off, at the public expense, in such manner, and upon such terms and conditions as may be provided by law.

AN ACT to raise an additional military force.

APPROVED, JANUARY 10, 1812.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* there be immediately raised ten regiments of infantry, two regiments of artillery, and one regiment of light dragoons, to be enlisted for the term of five years, unless sooner discharged.

SEC. 12. *And be it further enacted, That* there shall be allowed and paid to each effective, able-bodied man, recruited as aforesaid, to serve for the term of five years, a bounty of sixteen dollars; but the payment of eight dollars of the said bounty shall be deferred until he shall be mustered, and have joined some military corps of the United States service. And whenever any non-commissioned officer, or soldier, shall be discharged from the service, who shall have obtained

from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall, moreover, be allowed and paid, in addition to the said bounty, three months' pay, and one hundred and sixty acres of land; and the heirs and representatives of those non-commissioned officers or soldiers who may be killed in action, or die in the service of the United States, shall likewise be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land; to be designated, surveyed, and laid off, at the public expense, in such manner, and upon such terms and conditions as may be provided by law.

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AN ACT to provide for designating, surveying, and granting the military bounty lands.

APPROVED, MAY 6, 1812.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, authorized to cause to be surveyed a quantity of the public lands of the United States, fit for cultivation, not otherwise appropriated, and to which the Indian title is extinguished, not exceeding, in the whole, six millions of acres; two millions; to be surveyed in the territory of Michigan, two millions in the Illinois territory, north of the Illinois river, and two millions in the territory of Louisiana, between the river St. Francis and the river Arkansas; the said lands to be divided into townships, and subdivided into sections and quarter sections, (each quarter section to contain, as near as possible, one hundred and sixty acres,) in the manner prescribed by law for surveying and subdividing the other public lands of the United States, the same price to be allowed for surveying as is fixed for surveying the other public lands in the same territory. And the lands thus surveyed, with the exception of the salt springs and lead mines therein, and of the quantities of land adjacent thereto as may be reserved for the use of the same by the President of the United States, and the section number sixteen in every township, to be granted to the inhabitants of such township for the use of public schools, shall be set apart and reserved for the purpose of satisfying the bounties of one hundred and sixty acres, promised to the non-commissioned officers and soldiers of the United States, their heirs and legal representatives, by the act entitled "An act for completing the existing military establishment," approved the twenty-fourth



day of December, one thousand eight hundred and eleven, and by the act entitled "An act to raise an additional military force," approved the eleventh day of January, one thousand eight hundred and twelve.

SEC. 2. *And be it further enacted*, That, the Secretary for the Department of War, for the time being, shall, from time to time, issue warrants for the military land bounties to the persons entitled thereto by the two last mentioned acts, or either of them: *Provided always*, That such warrants shall be issued only in the names of the persons thus entitled, and be, by them or their representatives, applied for within five years after the same persons shall have become entitled thereto; and the said warrants shall not be assignable or transferable in any manner whatever.

SEC. 3. *And be it further enacted*, That every person in whose favor such warrants shall have been issued, shall, on delivery of the same at the office of the Secretary of the Treasury, or of such other officer as may at the time have, by law, the superintendence of the General Land Office of the United States, at the seat of government, be entitled to draw, by lot, in such manner as the officer at the head of the Land Office, under the direction of the President of the United States, may prescribe, one of the quarter sections surveyed by virtue of the first section of this act, in either of the said territories which the person in whose favor such warrant has issued may designate. And a patent shall thereupon be granted to such person, for such quarter section, without requiring any fee therefor.

SEC. 4. *And be it further enacted*, That no claim for the military land bounties aforesaid shall be assignable or transferable in any manner whatever, until after a patent shall have been granted in the manner aforesaid. All sales, mortgages, contracts, or agreements, of any nature whatever, made prior thereto, for the purpose or with intent of alienating, pledging, or mortgaging any such claim, are hereby declared and shall be held null and void; nor shall any tract of land, granted as aforesaid, be liable to be taken in execution or sold on account of any such sale, mortgage, contract, or agreement, or on account of any debt contracted prior to the date of the patent, either by the person originally entitled to the land, or by his heirs or legal representatives or by virtue of any process, or suit at law, or judgment of court, against a person entitled to receive his patent as aforesaid.

## BOUNTY LAND—WAR 1812.

AN ACT supplementary to the act entitled "An act for the more perfect organization of the army of the United States.

APPROVED, JANUARY 20, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint one additional major to the first regiment of light dragoons, the regiment of light artillery, each regiment of infantry, and the rifle regiment, in the army of the United States, who shall receive the like pay, rations, forage, and other emoluments, as officers of the same grade and corps of the present military establishment. \* \*

SEC. 4. *And be it further enacted*, That, in order to complete the present military establishment to the full number authorized by law, with the greatest possible dispatch, there shall be paid to each effective able-bodied man, who shall be duly enlisted into the service of the United States, after the first day of February next, to serve for the term of five years, or during the war, an advance of twenty-four dollars, on account of his pay, in addition to the existing bounty, one-half of such advance to be paid at the enlistment of the recruit, and the other half when he shall be mustered and have joined some military corps of the United States, for service; and a bounty of one hundred and sixty acres of land, as heretofore established by law.

AN ACT further extending the time for issuing and locating military land warrants.

APPROVED, JULY 5, 1813.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Secretary of War be authorized to issue military land warrants to such persons as have or shall, before the first day of March, one thousand eight hundred and sixteen, produce to him satisfactory evidence of the validity of their claims; which warrants, with those heretofore issued and not yet satisfied, shall and may be located, in the name of the holders or proprietors thereof, prior to the first day of October, one thousand eight hundred and sixteen, on any unlocated parts of the fifty quarter townships and the fractional quarter townships reserved by law for original holders of military land warrants. And patents shall be granted for the land located under this act in the same manner as is directed by former acts for granting military lands.

AN ACT to authorize the President to receive into service certain volunteer corps.

APPROVED, FEBRUARY 24, 1814.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the President of the United States be, and he is hereby, authorized to receive into the service of the United States such proportion of the volunteers, authorized by the act of sixth February, one thousand eight hundred and twelve, and the act supplementary thereto, of the sixth July, one thousand eight hundred and twelve, and accepted under the authority of said acts, as, in his judgment, the public service may require: *Provided, That* the volunteers so received shall engage to serve for five years, or during the war, unless sooner discharged.

SEC. 2. *And be it further enacted, That* the volunteers which shall be taken into service under the authority of the preceding section, shall be entitled to the same bounty, pay, rations, clothing, forage, and emoluments of every kind, and to the same benefits and allowances, as the regular troops of the United States.

SEC. 3. *And be it further enacted, That* the officers of corps of volunteers which shall be taken into service, shall rank, according to grade and the dates of their commissions or appointments, with other officers of the army.

AN ACT making further provision for filling the ranks of the army of the United States.

APPROVED, DECEMBER 10, 1814.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* from and after the passing of this act, each and every commissioned officer who shall be employed in the recruiting service shall be, and he hereby is, authorized to enlist into the army of the United States, any free effective able-bodied man, between the ages of eighteen and fifty years; which enlistment shall be absolute and binding upon all persons under the age of twenty-one years, as well as upon persons of full age, such recruiting officer having complied with all the requisitions of the laws regulating the recruiting service.

SEC. 4. *And be it further enacted, That* in lieu of the bounty of one hundred and sixty acres of land, now allowed by law, there shall be allowed to each non-commissioned officer and soldier hereafter enlisted, when discharged from service, who shall have obtained from the commanding officer of his com-

pany, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, three hundred and twenty acres of land, to be surveyed, laid off, and granted under the same regulations, and in every respect in the same manner now prescribed by law; and the widow and children, and if there be no widow nor child, the parents of every non-commissioned officer and soldier, enlisted according to law, who may be killed or die in the service of the United States, shall be entitled to receive the three hundred and twenty acres of land as aforesaid; but the same shall not pass to collateral relations, any law heretofore passed to the contrary notwithstanding.

**SEC. 5.** *And be it further enacted,* That any person subject to militia duty, who shall, according to law, furnish a recruit for the army of the United States at his own expense, during the war, shall thereafter be exempt from militia duty during the war; and every recruit thus furnished shall be delivered to some recruiting officer of the United States, who shall immediately grant his receipt for such recruit, to the person furnishing him, and shall forthwith report the same to the Department of War, and shall specify in the report the name of such person, and his place of residence, as well as the name and description of the recruit; whereupon it shall be the duty of the Secretary for the Department of War to grant to the person furnishing such recruit a certificate of exemption from militia duty during the war, upon calls made upon authority of the United States, which certificate shall be good and available to all intents and purposes for that object; and every recruit thus furnished shall be entitled to the bounty land, in the same manner, and upon the same conditions as the other recruits in the army of the United States.

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**AN ACT** making further provisions for military services during the late war, and for other purposes.

APPROVED, APRIL 16, 1816.

**SEC. 3.** *And be it further enacted,* That all soldiers who have been enlisted to serve for five years or during the war, and were above the age of forty-five, or under the age of eighteen years, who have faithfully served during the late war, and have been regularly discharged, and the representatives of such soldiers as shall have died whilst in the service of the United States, and all soldiers who have been enlisted and have faithfully served during the late war, until they have been promoted to the rank of commissioned officers, who, if they had served during the war under their en-

listment, and been regularly discharged, would have been entitled to a bounty in land, shall be entitled to one hundred and sixty or three hundred and twenty acres of land, according to the term of enlistment; the warrants and patents to issue in the same manner as in the case of soldiers enlisted of proper age, and discharged under similar circumstances.

SEC. 4. *And be it further enacted*, That, for the purpose of carrying the provisions of this act into effect, and other acts giving bounty lands to soldiers of the regular army, the President of the United States is hereby authorized to cause to be surveyed and laid off in one or more surveys, two millions of acres, not otherwise appropriated, in addition to the appropriations of lands by the act of May the sixth, one thousand eight hundred and twelve, for designating, surveying, and granting the military bounty lands according to the provisions of said act.

SEC. 5. *And be it further enacted*, That no transfer of land granted in virtue of this or any other law, giving bounties of land to the non-commissioned officers, musicians, and privates enlisted during the late war, shall be valid, unless the contract or agreement therefor, or letters of attorney, giving power to sell or convey, shall have been executed after the patents shall be issued and delivered to the persons entitled thereto.

### OPINIONS AND DECISIONS.

A second warrant issued by inadvertence, and located after one had been issued for the same land, but not located, shall not exclude the right of the first warrantee to locate elsewhere.

WASHINGTON, March 22, 1815.

*Question stated by the Secretary of War.*—A military land warrant is issued, and a patent thereon duly obtained for the land, in ignorance that a former warrant, in satisfaction of the same claim, had issued and was in existence, but never located. The first warrant is then presented at the Land Office. Can it be allowed location after the regular location and patent of the second warrant?

*Answer.*—If the government improvidently issue a second warrant for a claim on which it had granted a former one, I do not think that this circumstance alone should deprive the first warrantee of any of his rights. The neglect to locate is protected by the various acts of Congress which have passed from time to time, enlarging the period for the location of warrants for military bounty lands, even down to the act of July 5, 1813, which gives until the first of October,

1816, for their location. If, therefore, the first warrantee, in the case stated, stands in a predicament to be entitled to his location and patent on all other grounds, I am of opinion that the fact of the second warrant and patent having been issued should not exclude him.

RICHARD RUSH, *Attorney General*.

1. Every non-commissioned officer and soldier, enlisted since 10th December, 1814, entitled to 320 acres.

2. Minority does not create incapacity to take land bounty any more than bounty in money or pay.

WASHINGTON, *August 1, 1815.*

Are persons enlisted since the 10th of December, 1814, entitled to their land warrants for the additional bounty, in the same manner as those enlisted prior to that period? Are minors, regularly enlisted, entitled to their land warrants?

*Answer.* 1. I think that every non-commissioned officer and soldier enlisted since the 10th of December, 1814, is entitled to a bounty of 320 acres of land, provided that he obtain, on his discharge from service, a certificate from the commanding officer of his company, battalion, or regiment, that he had faithfully performed his duty while in service.

2. I do not think that the fact of minority creates any incapacity to take the land bounty, any more than the bounty in money or pay. The contract of the Legislature must be fulfilled in this, as in all other respects. The minor who brings himself within all the other requisites is, I think, entitled to his land warrant in like manner with persons of full age.

RICHARD RUSH, *Attorney General*.

1. Construction of the acts of January 11, 1812, and of April 16, 1816, granting bounty land. Optional with the guardian to elect either the bounty land or half-pay for minor's benefit.

WASHINGTON, *June 17, 1816.*

The 12th section of the act of Congress of January 11, 1812, gives to soldiers enlisted for five years, or during the war, a bounty of 160 acres of land; and in case of their being killed, or dying in the service, the said bounty is to go to their heirs.

The 2d section of the act of April 16, 1816, making further appropriation for military services during the war, provides among other things, that it shall be lawful for the guardians of the children of such deceased soldier, where they are under sixteen years of age, to relinquish the bounty land aforesaid, and to receive, in lieu thereof, on behalf of the

said children, one-half of the monthly pay to which the deceased person was entitled, for and during the term of five years.

*Question.*—Is the bounty land mentioned in the said act of January 11, 1812, to be considered, by virtue of the death of the soldier, as so far vested in the heirs as not to be capable of being divested, for the purposes specified, by the subsequent act of April 16, 1816?

*Answer.*—I think not. The act of April 16, 1816, seems not so much designed to take away a vested right, as to open the door to a new privilege in favor of the minor.

Not considering that a compulsory acceptance is thrown upon the guardian, I imagine him hereby to have an option, which it is to be presumed he will exercise for the minor's benefit. Taking the act under an opposite view—that is, supposing the guardian not to have an option—I should doubt the authority of Congress to extinguish, in such a case, or even coercively to modify, a right already vested.

RICHARD RUSH.

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Under act of April 16, 1816, a soldier who has enlisted for five years or during the war, and serves under that enlistment until promoted to the rank of a commissioned officer, is entitled to his land bounty, although he resigns before close of war.

RICHMOND, July 29, 1819.

SIR: I received at this place the letter from Jeremiah N. Sterling, on which you have requested my opinion. Mr. Sterling is an applicant for land bounty, under the 3d section of the act of the 16th of April, 1816, entitled "An act making further provisions for military services during the late war, and for other purposes." He states that he enlisted as a soldier, and served during the late war, until he was promoted to the rank of a commissioned officer, which commission he resigned *before the conclusion of the war*. And the single question presented by his case is, whether that resignation cuts him off from the bounty provided by the section of the act in question; or, in other words, whether, to entitle him to the land bounty, he was not bound to have served *under his commission* until the end of the war?

In considering the just construction of this section, it is observable that it provides for those classes of persons for whom no previous provision has been made, to wit:

1. All soldiers above the age of forty-five, or under the age of eighteen, who had been enlisted to serve for five years or during the war, and who had faithfully served during the war and had been regularly discharged.

2. The representatives of *such* soldiers as had died whilst in the service of the United States.

3. *All soldiers* who had been enlisted and had faithfully served during the war *until they had been promoted to the rank of commissioned officers*, who, if they had served during the war under their enlistment and had been regularly discharged, would have been entitled to a bounty in land. Under this third provision, the only questions in relation to Mr. Sterling are—

1st. Was his enlistment as a soldier of that character, that if he had served under it during the whole war, and been regularly discharged, he could not have been entitled to the land bounty; *i.e.* was he listed for five years, or during the war?

2d. Did he serve under that enlistment *until he was promoted to the rank of a commissioned officer*?

If the facts of the case answer both these questions in the affirmative, he is, in my opinion, clearly entitled to the bounty under this act. To require that he should have served *under his commission till the end of the war*, in order to entitle him, is to require what the act of Congress does not require. If Congress intended the service so to continue, they have not said so. Their words are, "all soldiers who have been enlisted and have faithfully served during the late war, *until they have been promoted to the rank of commissioned officers.*" The moment the soldier is so promoted, his right attaches, and he is from that moment placed exactly on the footing of the soldier who had served during the war, and until regularly discharged. Any other construction would render the words "*until they have been promoted to the rank of commissioned officers*" utterly senseless; whereas they are obviously used, and used for the express purpose of marking the very epoch and the event on which the right to the bounty was intended to attach. This policy of the law, I presume, was to promote emulation in the ranks, and to reward the successful competitor.

WM. WIRT.

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OFFICE OF THE ATTORNEY GENERAL, Dec. 26, 1819.

SIR: The two questions submitted for my opinion are—

1st. Are the warrants granted for military bounty land, granted to certain Canadian volunteers under the act of 5th March, 1816, assignable or transferable?

2d. If, before a patent issues which would be predicated on a warrant of this class, it is discovered that the warrant



was fraudulently obtained, is the Secretary of War authorized to annul it?

1. The warrant has nothing of a negotiable character on its face. It does not state that the volunteer *and his assigns*, or that the volunteer *or the holders of the warrant*, is entitled to the land. It certifies only that the volunteer himself is entitled. Nor does the act under which these warrants issue make them assignable; nor does it give any authority to the Commissioner to issue a patent to the assignee or holder of the warrant. Taking the question, therefore, on this act alone, it might well be questioned whether the Commissioner could properly issue a patent to the assignee of such a warrant. But, considering this act as a part of a system of legislation on the subject, and therefore to be construed in connection with the acts of the 6th May, 1812, and the 16th April, 1816, (both of which expressly prohibit the assignment of military warrants for land bounty, and declare the transfer of them invalid;) considering, too, that these warrants to Canadian volunteers are as completely within the policy of these prohibitions as military lands of any other description;—I hold it the safer opinion, that they cannot pass by assignment or transfer.

2. A warrant obtained by fraud is of no value to the holder, and I cannot, therefore, conceive any injury which can result from canceling it. On the contrary, the fraud being fixed, I consider it the duty of the Secretary, both towards the Government and towards society, to disable the warrant from being used as an instrument of further mischief. But, since the evidence which fixes the fraud must, from the necessity of the case, be always *ex parte* in relation to the holder of the warrant, whose character as well as rights are staked on the correctness of the Secretary's decision, I submit as the better course to cancel the warrant in such a way as to incapacitate it for circulation, without rendering it illegible; noting on the warrant, in a few words, the cause of its cancellation, and then handing it back to the person who presented it, to seek any redress to which he may be entitled before the tribunals of his country.

WM. WIRT.

To the SECRETARY OF WAR.

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The representatives of Jacob Meyers, under acts of 6th February, 1812, and 29th January, 1813.

OFFICE OF THE ATTORNEY GENERAL, June 21, 1820.

SIR: I have collated with care all the acts of Congress which affect the case of Jacob Meyers, a volunteer, who died

in the service of the United States on the 3d March, 1813, and am of the opinion that his representatives are entitled to the bounty given by the act of the 6th of February, 1812, and reassured by the act of the 29th January, 1813—the right of the volunteer to this bounty becoming vested by his death on the 3d March, following; but that the act of the 16th of April, 1816, does not bear on his case; and that, consequently, they are not also entitled to the half-pay. In conformity with your suggestion, I give you the result merely of this examination, without the process of reasoning by which I have been conducted to it.

I have the honor to be, sir, very respectfully, your obedient servant.

WM. WIRT.

To the SECRETARY OF WAR.

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Canadian volunteers may locate land warrants by attorney, and patent may issue in name of volunteer.

ATTORNEY GENERAL'S OFFICE, *December 29, 1820.*

SIR: In reference to the question propounded to me from your department on the 26th, I can see no reason why Canadian volunteers should be excluded from the common privilege of acting by attorney in locating land warrants, nor why patents should not issue on such locations *in the name of the volunteer*. The opinion which I gave to the Secretary of War on the 26th December, 1819, related merely to the assignable quality of those warrants, and had nothing to do with the right of the volunteer to act by attorney in fact, properly constituted as such. The course you propose, therefore, is, in my opinion, perfectly proper.

WM. WIRT.

To the SECRETARY OF THE TREASURY.

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Free negroes enlisted in the public service entitled to bounty land and pensions

ATTORNEY GENERAL'S OFFICE, *March 27, 1823.*

SIR: Had I been called on, *à priori*, to give a construction to the several acts of Congress which are the subject of Mr. Cutting's letters of the 21st May, 1821, and 30th January, 1823, of Maj. Charles J. Nourse's of the 20th January, 1823, and Mr. J. W. Murray's of 22d December, 1822, I should have had no hesitation in expressing the opinion that it was not the intention of Congress to incorporate negroes and people of color with the army any more than with the militia of the United States. But the acts of Congress under which this body of people of color are understood to have been raised during the late war uses no other terms of de-

scription as to the recruits, than that they shall be "effective able-bodied men,"—[act 24th December, 1811, "for completing the existing military establishment," and act 11th January, 1812, "to raise an additional military force,"] or "free, effective, able-bodied men," [act December 10, 1814, "making further provision for filling the ranks of the army of the United States."]. As either of these descriptions was satisfied by the persons of color in question; as the recruiting officers, who were *quoad hoc* the agents of the United States, recruited these persons on a contract for the pay and bounty stipulated by law; as the officers of government recognize them as a part of the army, by their regular returns of this corps, who received, till the close of the war, the same pay and rations with other troops, were subject to the same military law, and performed the same military services, it seems to me that a practical construction has been given to the law in this particular, from which it is not in the power of the government justly to depart. I think, therefore, that they ought to receive the promised land bounty. But without some further and more explicit declaration of the purpose of Congress, I would not recommend a repetition of such contracts, on any future occasion, on laws worded like those under consideration—by which I mean not merely the three laws which I have cited, but the whole military system of the United States, militia included. The papers are returned.

WM. WIRT.

The Hon. JOHN C. CALHOUN.

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A soldier's title to land bounty, under the act of 11th January, 1812, is not impaired by his employing a substitute.

ATTORNEY GENERAL'S OFFICE, Nov. 4, 1831.

SIR: In reply to your inquiry of this morning, I have the honor to state that, in my opinion, a soldier, who during the late war was enlisted to serve for the term of five years, and was honorably discharged before the expiration of his term of service, in consequence of his having provided a substitute, (who, however, afterwards deserted,) is entitled to one hundred and sixty acres of land from the United States, under the act of Congress of January 11, 1812. The United States, in accepting the substitute, receives what they regard as an equivalent for the services of the soldier; and I do not think that he is responsible for the future conduct of the person thus agreed to be accepted. As soon as he is discharged from service, and obtains the certificate that he has faithfully performed his duty whilst in service, he becomes entitled to

the land; and no subsequent contingency can destroy his right.

R. B. TANNEY.

To the SECRETARY OF WAR.

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As real estate, a right to bounty land, may be devised to one heir-at-law, and to the exclusion of another, by the legal *construction* of the will of the testator, without being so expressed in direct terms.

ATTORNEY GENERAL'S OFFICE, Oct. 25, 1832.

SIR: From the statement before me, I think that Thilia Porter, as the heir and devisee of Lieutenant John Thorp, deceased, is entitled to the bounty lands due to him.

The case is this: John Thorp, at the time of his death, left issue two daughters, Elizabeth Serring and Thilia Porter, who were his heirs-at-law. The two grandsons mentioned in his will were the children of his daughter, Mrs. Serring.

The bounty land is not expressly devised to any one, nor is there any express general devise of the residue of his real estate. And if there had been nothing in the will to exclude Mrs. Serring from a share of the bounty lands, they would have descended equally to his two daughters, who were his heirs-at-law.

But the testator directs that the devise of certain real and personal estate made to Mr. and Mrs. Serring should go in full satisfaction of all right, title, interest, claim, and demand, whatsoever, which they might or could in any way pretend to have or claim to all or any part of his real or personal estate, except the bequest of the one-half of the residue of his personal estate, which, by a preceding clause in his will, he had given to her.

This strong language of exclusion from everything but the property above mentioned appears to me to be, by necessary implication, a devise to Mrs. Porter, his only remaining heir-at-law, of the share of the residue of his real estate, which, in the absence of this clause or exclusion, would have descended to Mrs. Serring. The bounty lands, not being devised to any one, would be left to descend to the heirs-at-law. And when the testator gives to one of his heirs the one-half of the residue of his personal estate, and excludes her in express terms from any share of the residue of his estate, the portion of that heir in the residue of the real estate is, in my opinion, by necessary implication, given to his remaining heir. And Mrs. Porter is therefore entitled to these lands.

This opinion is expressed under the belief that the will of Mr. Thorp is sufficiently attested to pass real estate, and that his two daughters, Mrs. Serring and Mrs. Porter, were both

living at the time of his death. The officer in charge of the Bounty Land Office will, of course, satisfy himself on these points before he acts on this opinion. R. B. TANEY.

To the SECRETARY OF WAR.

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The heirs of a widow who died intestate are not entitled to the bounty land claims of her deceased husband, who also died intestate; but the heirs of the deceased husband are entitled.

ATTORNEY GENERAL'S OFFICE, *Sept. 5, 1833.*

SIR: In reply to your letter of to-day, I have the honor to state that it appears, from the papers before me, that Jacob Brice, of Maryland, who was entitled to the bounty land in question, died many years ago, intestate, leaving a widow and three children; that the children all died intestate and without issue, in the life of the widow; and she died about the year 1817, intestate, without leaving issue, she not having married again. The present applicants for the land make claim to it as her heirs-at-law.

Upon the facts as set forth in the papers before me, the present applicants do not show themselves entitled to the land. It descended, on the death of Jacob Brice, to his children, and vested by descent in the surviving child. The mother was not the heir of that child, unless there was no representative to be found in the paternal line. And there is no evidence to show that there were not brothers and sisters of Jacob Brice, or some one of kin to him in the paternal line, who was competent to take, upon the death of the surviving child. The claim of the present applicants cannot, therefore, be allowed.

I am, sir, very respectfully, your obedient servant,

To the SECRETARY OF WAR.

R. B. TANEY.

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### APPLICATION FOR LOST DISCHARGES.

AN ACT providing for cases of lost military land warrants and discharges for faithful services.

APPROVED, APRIL 27, 1816.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when any soldier of the regular army, having obtained a military land warrant, shall have lost, or shall hereafter lose, the same, or the said warrant shall have been, or may be, by accident, destroyed, every such soldier shall, upon proof thereof, to the satisfaction of the Secretary of War, be entitled to a patent, in like manner as if the said warrant was produced.

SEC. 2. *And be it further enacted,* That in all cases of dis

charges from the military service of the United States, of any soldier of the regular army, when it shall appear to the satisfaction of the Secretary of War that a certificate of faithful services has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission shall not prevent the issuing of the warrant and patent as in other cases. And when it shall be proved as aforesaid that any soldier of the regular army has lost his discharge and certificate of faithful service, the Secretary of War shall cause such papers to be furnished such soldier of the regular army as will entitle him to his land warrant and patent: *Provided*, Such measure be justified by the time of his enlistment, the period of service, and the report of some officer of the corps to which he was attached.

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Regulations and instructions for the use of applicants for bounty land for military service in war of 1812, and for identifying claimants in lieu of their lost discharges.

PENSION OFFICE, *August 10, 1850.*

The existing laws providing land bounty to the soldiers of the war of 1812 are applicable to those men only who enlisted in the regular army for "five years," or for "during the war," and were "honorably discharged," or died whilst in service. A surviving soldier of the war of 1812, on his application for bounty land, is required to produce his original discharge, and his oath, duly authenticated, showing that he is the individual mentioned in the discharge; but if the discharge is lost, he must identify himself by his affidavit, according to the printed form for that purpose, headed "Form for lost discharges."

The heirs of a deceased soldier of the war of 1812, in their application for bounty land, are required to state as explicitly as practicable when and where the soldier enlisted, the name or number of the regiment to which he belonged, the name of his captain, or the names of some of the other officers under whom he served; for this latter purpose no forms are prescribed. The facts, however, must be set forth under oath, and the affidavits must be duly authenticated. The magistrates who may administer the oaths must certify to the credibility of the witnesses, and the official character and signature of the magistrate must be certified by the proper officer under his seal of office.

Citizenship must be established by proof taken before a court of record, according to the laws of the State in which the heirs reside. The forms will direct the clerks of the courts

how to draw up the certificates, to which must be attached  
their official seals. [J. L. E.]

#### FORM FOR LOST DISCHARGES.

STATE OF..... } ss.  
COUNTY OF..... }

I....., do declare that I was a..... in the company commanded  
by..... of the..... regiment of.....; that I was enlisted  
at..... by....., on the..... day of....., one thou-  
sand eight hundred and....., for the term of....., and served  
faithfully until the....., one thousand eight hundred and.....  
when I was honorably discharged at..... by....., on account of  
....., and was last paid by....., paymaster; and my discharge  
which duly testified all these particulars, was lost by.....  
[State by what means]

[Signed.] .....

SWORN AND SUBSCRIBED TO, before me, this }  
..... day of..... one thou- }  
sand eight hundred and..... }  
....., Clerk, &c.

#### FORM OF APPLICATION UNDER PRECEDING LAWS,

For services in the war of 1812, under enlistment for "five years," or "during  
the war."

STATE OF..... } ss.  
COUNTY OF..... }

On this..... day of....., A.D. 185..., before me, the under-  
signed, a....., duly authorized by law to administer oaths within  
and for the County and State aforesaid, personally appeared.....  
aged..... years, a resident of....., in the County of....., and  
State of.....; who, being duly sworn according to law, declares that  
he is the identical..... who was a..... in the company  
..... commanded by Captain....., in the..... regiment of  
..... United States army, commanded by....., in the war  
with Great Britain, declared by the United States on the 18th June, 1812.

That he enlisted or entered the service at....., about the..... day  
of..... A.D. 18...; for the term of....., and was honorably dis-  
charged at....., on the..... day of....., A.D. 18...: That he  
cannot file herewith his certificate of discharge, for the reason that.....

He makes this declaration for the purpose of obtaining the Bounty Land to  
which he may be entitled on account of said service. He also declares that he  
has not received a Warrant for Bounty Land, nor made any other application  
therefor on account of such service,.....

He hereby appoints..... his true and lawful Attorney, with power  
of substitution, to prosecute his claim for land, to receive the Certificate or  
Warrant when issued, and to do all other acts necessary and proper in the  
premises. ....

SWORN TO AND SUBSCRIBED before me, on the day and year first above men-  
tioned, and I hereby certify that I know the said deponent....., and  
believe him to be the identical man who served as is above stated, and that he  
is of the age above stated; and further, that I am not interested in this his  
claim as attorney or otherwise. .... J. P.

STATE OF..... } ss.  
COUNTY OF..... }  
TOWN OF..... }

On this..... day of....., A.D. 18..., before me, the subscriber, a.....  
in and for said County, duly authorized to administer oaths, personally came  
....., aged..... years, and....., aged..... years, whom  
I know to be residents of the County and State aforesaid, and persons whom I

certify to be respectable, and entitled to credit, and who, being duly sworn, say that they were present and saw.....execute the foregoing affidavit by signing his name to the foregoing declaration, and making oath thereto in due form of law, and they further swear that they are acquainted with the said ....., now present, and have every reason to believe, from the appearance of the applicant, that he is the identical person he represents himself to be ; and further, that they, deponents, do reside in the County aforesaid.

WITNESS.....

Sworn to and Subscribed before me, }  
this.....day of....., A.D. 18... }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esq., before whom the foregoing Declaration and Power of Attorney were made and acknowledged, and who has thereunto subscribed his name, was, at the time of so doing, a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of ..... Court, for the county aforesaid, this.....day of....., 18....

Clerk of.....





# BOUNTY LAND.

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MEXICAN WAR.

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Act of 11th February, 1847, granting bounty-land or scrip  
**to** the non-commissioned officers and soldiers of the regular  
**army** and volunteers in the war with Mexico.

## BOUNTY-LAND—MEXICAN WAR.

AN ACT to raise for a limited time an additional military force, and for other purposes.

APPROVED, FEBRUARY 11, 1847.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in addition to the present military establishment of the United States, there shall be raised and organized, under the direction of the President, for and during the war with Mexico, one regiment of dragoons and nine regiments of infantry, each to be composed of the same number and rank of commissioned and non-commissioned officers, buglers, musicians, and privates, etc., as are provided for a regiment of dragoons and infantry, respectively, under existing laws, and shall receive the same pay, rations, and allowances, according to their respective grades, and be subject to the same regulations, and to the rules and articles of war, etc. \* \* \*

SEC. 9. *And be it further enacted,* That each non-commissioned officer, musician, or private, enlisted or to be enlisted in the regular army, or regularly mustered in any volunteer company for a period of not less than twelve months, who has served or may serve during the present war with Mexico, and who shall receive an honorable discharge, or who shall have been killed, or died of wounds received or sickness incurred in the course of such service, or who shall have been discharged before the expiration of his term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant from the War Department for the quantity of one hundred and sixty acres, and which may be located by the warrantee, or his heirs at law at any land office in the United States, in one body, and in conformity to the legal subdivisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made, to the General Land Office, a patent shall be issued therefor. That in the event of the death of any such non-commissioned officer, musician, or private, during service, or after his discharge, and before the issuing of a certificate or warrant as aforesaid, the said certificate or warrant shall be issued in favor, and inure to the benefit of his family or relatives, according to the following rules: first, to the widow and to his children; second, his father; third, his mother. And in

the event of his children being minors, then the legally-constituted guardian of such minor children shall, in conjunction with such of the children, if any, as may be of full age, upon being duly authorized by the orphans' or other court having probate jurisdiction, have power to sell and dispose of such certificate or warrant for the benefit of those interested. And all sales, mortgages, powers, or other instruments of writing, going to affect the title or claim to any such bounty right, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever, nor shall such claim to bounty right be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by the soldier, prior to the issuing of such certificate or warrant: *Provided*, That no land warrant issued under the provisions of this act shall be laid upon any lands of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation: *Provided, further*, That every such non-commissioned officer, musician, and private, who may be entitled, under the provisions of this act, to receive a certificate or warrant for one hundred and sixty acres of land, shall be allowed the option to receive such certificate or warrant, or a treasury scrip for one hundred dollars; and such scrip, whenever it is preferred, shall be issued by the Secretary of the Treasury to such person or persons as would be authorized to receive such certificates or warrants for lands; said scrip to bear an interest of six per cent. per annum, payable semi-annually, redeemable at the pleasure of the government. And that each private, non-commissioned officer, and musician, who shall have been received into the service of the United States, since the commencement of the war with Mexico, for less than twelve months, and shall have served for such term or until honorably discharged, shall be entitled to receive a warrant for forty acres of land, which may be subject to private entry, or twenty-five dollars in scrip, if preferred: and in the event of the death of such volunteer during his term of service, or after an honorable discharge, but before the passage of this act, then the warrant for such land or scrip shall issue to the wife, child, or children, if there be any, and, if none, then to the father, and, if there be no father, then to the mother of such deceased volunteer: *Provided*, That nothing contained in this section shall be construed to give bounty land to such volunteers as were accepted into service, and discharged without being marched to the seat of war.

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AN ACT making land warrants assignable, and for other purposes.

APPROVED, MARCH 22, 1862.

SEC. 4. *And be it further enacted, \* \* \** That the last proviso of the ninth section of the act of eleventh February, eighteen hundred and forty-seven, be and the same is hereby repealed.

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AN ACT explanatory of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved eleventh February, eighteen hundred and forty-seven.

APPROVED, MAY 27, 1848.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the term "relatives," as used in the ninth section of the act entitled "An act to raise, for a limited time, an additional military force, and for other purposes," approved eleventh February, eighteen hundred and forty-seven, shall be considered as extending to the brothers and sisters of those persons whose services, under that act, may have entitled them to the land therein provided; the order or priority of right, however, shall remain as declared in that act; and those failing, the right shall accrue, fourthly, to the brother or sister, or in equal proportions to the brothers and sisters of the deceased, as the case may be.

SEC. 2. *And be it further enacted,* That the benefits of the said act of eleventh February, eighteen hundred and forty-seven, shall not be construed as forfeited by the privates and non-commissioned officers who have been, or may be, promoted to the grade of commissioned officers during their service in Mexico, and who shall have subsequently fulfilled the condition of their engagements: *Provided,* Such promotion shall have been made subsequent to the original organization of the company, corps, or regiment to which such privates and non-commissioned officers may have belonged.

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Joint Resolution relative to the evidence which shall be considered satisfactory in applications for bounty land.

APPROVED, MARCH 24, 1848.

SEC. 1. *Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That in all cases of application for bounty land warrant, under the act approved February eleventh, eighteen hundred and forty-seven, the honorable discharge of the applicant, showing the same was predicated on a surgeon's certificate of disability, shall be considered as satisfactory evidence to the Commissioner of Pensions that the disability was incurred in the course of service.

### OPINIONS AND DECISIONS.—ACT FEB. 11, 1847.

Soldiers who have elected to take scrip instead of bounty lands, and have obtained the requisite certificate from the Commissioner of Pensions, cannot be permitted to surrender such scrip and obtain a warrant for lands instead.

"The act of 11th February, 1847, gives but one election; and when that is made known, it becomes the duty of the department to conform to it by issuing the scrip or warrant, which completes the proceeding."

ATTORNEY GENERAL'S OFFICE, *October 30, 1847.*

SIR: The papers in the case of David Stutsman, which you referred to me on the 23d instant, present but a single question, which is: Can a discharged soldier, who is entitled either to a certificate for bounty land or treasury scrip under the act of the 11th February, 1847, after he has made his election of the one, and it has been issued to him, surrender the same, and take the other? I think not, under the circumstances of this case.

It appears that the scrip was regularly issued to Stutsman on the 25th September, 1847, in pursuance of an application in writing previously made and signed by the party and subscribing witness. The evidence that he has exercised the "option" secured to him by the second proviso in the ninth section of the act aforesaid, is full and uncontradicted. This being so, and the Commissioner of Pensions having certified that there was no error in the issuance of the scrip, the law is fully executed, and Stutsman must abide by his own decision in the premises. By that proviso the party has but one election; and when that is made known, it becomes the duty of the department to conform to it by issuing the proper evidence of the claim, which completes the proceedings. NATHAN CLIFFORD.

To the SECRETARY OF THE TREASURY.

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Volunteers mustered for twelve months, but discharged before expiration of services, is entitled.—*Decision, Secretary of War, May 13, 1847.*

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A soldier regularly enlisted, who afterwards was permitted a furlough to act as a teamster or wagoner, and who continued to act in that capacity until his discharge, is entitled to land.—*Decision Secretary of War, June 29, 1847.*

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Under the act of 11th February, 1847, a soldier who performed two or more tours of duty during the Mexican war, is entitled to a land warrant for each service.—*Decision Secretary of War, July 21, 1847.*

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A soldier discharged upon his own request before his time expired that he may re-enlist, is entitled to land under act of 1847.—*Decision Secretary of War, July 24, 1847.*

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Volunteers who were mustered into service under the act of May 13, 1846, and who served in Mexico, Florida, or elsewhere, are entitled to bounty land under act of 1847.—*Decision Secretary of War, Dec. 22, 1847.*

"Soldiers who enlisted during the war with Mexico for twelve months, but who, without having been wounded or sick were honorably discharged by General Taylor, are not entitled to bounty lands under the act of 11th February, 1817."

ATTORNEY GENERAL'S OFFICE, *March, 17, 1848.*

SIR: I have considered the question presented in your communication of the 14th December last, and now proceed to state my views upon the point, in compliance with your request.

The single question to which you require a response is, whether a volunteer soldier who was honorably discharged before the expiration of the time for which he had engaged, and before the whole company was discharged, is entitled to the land bounty provided in the ninth section of the act to raise, for a limited time, an additional military force, approved 11th February, 1847. The solution of the question depends upon the construction to be given to the provisions of that law allowing the bounty. The case presented as an example, and the one upon which my opinion is requested, is that of James Coleman, who, it appears, enlisted for twelve months as a volunteer, in June, 1846, and was discharged in October of the same year. The certificate of honorable discharge was granted to him under the special order of Major-General Taylor, No. 156, bearing date 15th October, 1846, and is in the following words: "4th. James Coleman, late sergeant-major of the 2d regiment Indiana volunteers, is hereby honorably discharged from the service."

In the absence of any explanation to the contrary, and of all means of ascertaining the true case of the discharge, I think it is no more than a reasonable inference to conclude that it was granted at the request and for the benefit of the party receiving it. It must be presumed, I think, from the statement of the case, that the claimant voluntarily withdrew from the service before the expiration of the twelve months for which he had enlisted; whether to engage in some other branch of it, under a new contract, or to return to his home, does not appear. It does appear, however, that he surrendered the contract under which he was engaged before the expiration of twelve months, and therefore cannot be entitled to the bounty which is attached to that length of service. The case does not show that he was discharged in consequence of wounds received or sickness incurred in the course of such service, nor is it pretended that such was the fact.

The bounty under the first clause of the section is based upon a prescribed term of service, and cannot be allowed, under existing laws, for any period less than the one men-

tioned in the act. The claimant must show that he enlisted, and was regularly mustered into the service, and that he continued in the service for twelve months, and received an honorable discharge, before his claim can be admitted under that clause. The service in this case having been for a period less than twelve months, the claim is clearly excluded from this part of the section. The discharge not having been given on account of wounds received or sickness incurred in the course of such service, it will not be pretended that the case is embraced in either of the clauses applicable to that class of cases. It is clear, therefore, to my mind, that no construction would include this case, short of holding that the right to land bounty is based entirely upon the certificate of honorable discharge, and that the right is perfected whenever the discharge is granted, no matter how short the period of service. This cannot be admitted, unless it appear to have been granted for some of the special causes mentioned in the act. If it be held that the requirement of the law is answered by any period of service less than twelve months, then one day is sufficient, as the period of twelve months is the only one named in the act applicable to this class of cases. In my judgment, such was not the intention of Congress; and I think it would be unsafe so to conclude, without an amendatory act to that effect. If it had been the intention of Congress to allow the bounty in other cases than those enumerated, where a discharge was granted before the expiration of the term of service, it is presumed the law would have so declared; and until that declaration is made by Congress, I think the benefits of the act must be confined within the limits already suggested.

NATHAN CLIFFORD.

To the SECRETARY OF WAR.

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A soldier who served in Mexico, and left the seat of war with his company, but was discharged a few days before the expiration of his enlistment is entitled to land, under act of 1847.—*Decision Secretary of War, April 24, 1848.*

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A soldier entitled to bounty land having died, leaving a mother, who did not receive it during her life; her heirs are entitled.—*Decision Secretary of War, March 24, 1848.*

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The soldier who enlisted is entitled to the land, not any substitute whom he may have employed.—*Decision Secretary of War, November 3, 1848.*

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A recruit rejected upon examination is not entitled to bounty land --*Decision Secretary of War, January 1, 1849.*



Bounty land fraudulently obtained does not invalidate the rightful claim.

DEPARTMENT OF THE INTERIOR, *May 16, 1849.*

SIR: In the case of Robert Ambrose, who claims bounty land as heir-at-law of Philip S. Ambrose, a soldier of the United States army, killed in Mexico, I am of opinion that his claim is valid under the law. The fact that the widow of *George Ambrose* fraudulently obtained the warrant should not prejudice the claim of the person legally entitled. It would be palpably unjust that innocent persons should suffer from the laches or neglect of the Government or its agents. I herewith return the papers in both cases.

COMMISSIONER OF PENSIONS.

T. EWING.

A soldier discharged on account of disease contracted before enlistment is not entitled to bounty land.

DEPARTMENT OF INTERIOR, *June 2, 1849.*

In case of Henry Brand's application for bounty land under act of 11th February, 1847, the discharge has the word "honorable" erased, and the surgeon's certificate shows chronic epilepsy of a date anterior to his enlistment. There was imposition upon Government. He is not entitled.

T. EWING.

"A soldier who enlisted into the army in 1846, for the term of five years, and served until April, 1849, when in consequence of the reduction of the army, he was honorably discharged, against his own wishes, is entitled to the bounty land provided by the 9th section of the act of 4th February, 1847.

"The 9th section of that act embraces those of the regular army enlisted for twelve months, or for a longer period; volunteers mustered into a volunteer company, who served during the war, and have been honorably discharged; those killed, or who died of wounds received, or by sickness incurred in the service; and those who were discharged before the expiration of their term of service, in consequence of wounds received or sickness incurred in the course of their service."

ATTORNEY GENERAL'S OFFICE, *July 27, 1849.*

SIR: The claim of John Hasson, late a sergeant in the general recruiting service, to the benefit of the bounty land provided by the 9th section of the act of the 4th February, 1847, (*Session acts, p. 14,*) submitted by you to this office, I have carefully considered.

It rests altogether upon what is the proper construction of that section. The facts are these: The claimant was enlisted on the 29th of January, 1846, and on the 11th April, 1849, *honorably* discharged. The discharge was made against his wish, and in consequence of the reduction of the army after the termination of the Mexican war. The term of his enlistment was five years.

The Pension Office thinks the claim unfounded, and has

so decided. Its interpretation of the section is, that it embraces only those who served out their full term, or were prevented in consequence of wounds, disabilities, or death.

I construe it differently. In my opinion it embraces three classes :

1st. Those of the regular army enlisted for twelve months or for a longer period ; volunteers regularly mustered into a volunteer company, "who have served, or may serve, *during*" the war with Mexico, and are then, at the end of the war, honorably discharged.

2d. Those killed, or dying of wounds received or sickness incurred, "in the course of *such service*."

3d. Those who are discharged before the expiration of their term of service, "in consequence of wounds received or sickness incurred in the course of *such service*."

The first class need only to serve *during the war*, and to be honorably discharged at its termination, to entitle them to bounty. It is not necessary to show service in the army for the whole period of the enlistment. The second : death from wounds or sickness received or incurred *during service in the war*, and not during the term of enlistment, when that extends beyond the close of the war. Third : those who, by reason of wounds or sickness occurring in the war, are discharged *before the close of the war*.

The view taken by the Pension Office is, that the express provision for this latter class, shows that the terms "and who shall receive an honorable discharge," applicable to the first class, were not meant to embrace any other such discharge than one granted after the full period of enlistment had been served out.

This construction evidently renders it necessary to add to that part of the section these words : "at the expiration of his term of service." The terms actually used neither imply nor justify such an addition. They are, in themselves, perfectly clear. A non-commissioned officer, etc., enlisted in the regular army, or such a volunteer as is described mustering in a volunteer company, and serving *during the war*, not during the *period of enlistment*, and then honorably discharged, is to receive the bounty. The words necessary to be superadded by the construction in question, manifestly changes the entire sense of the language used : nor is such an interpretation called for by the object of the provision. That evidently was to hold out an incentive to faithful and gallant service *during the war*. It did not look to service *during a state of peace*. The increased peril of a war service, and the increased occasion it furnished for skill and daring,

gave rise to the bounty. This being so, it would seem strange that the soldier who served during the very exigency, and that ceasing, was honorably discharged, should not be entitled to the very benefit designed to meet it. The express provision for the third class, upon which the other view rests, is susceptible, I think, of a meaning perfectly consistent with the one I give to the provision for the first class. It is this: That it includes those who are discharged *before the end of the war*, and the termination of the enlistment, in consequence of wounds or sickness happening during the war.

In my opinion, the words "in course of such service," applying to the second and third classes, are equivalent with the words applicable to the first class, "who has *served*, or may *serve*, during the *present war*." The service meant is not a service commensurate with the term of enlistment, but with the continuance of the war, wholly irrespective of the term of enlistment. The words relied upon by the Pension Office for its decision, in my opinion, therefore, mean this: A discharge during the war, prior to the expiration of enlistment, in consequence of wounds or sickness occurring during the war. So far from qualifying, by limiting, the antecedent provision for the first class, they embrace another which would not have been otherwise provided for. Under the first, an honorable discharge at the *end of the war* is required. Under this, a discharge during the war, and before its end, in consequence of wounds, etc., is sufficient.

But there is another ground, in my judgment, sufficient to sustain the claim. The objection is not that the claimant did not serve during the war, and was not afterwards honorably discharged, but that he did not serve out his term of enlistment. The enlistment being on the 29th of January, 1846, was, under the law as it then stood, for a term of five years. But the act of the 13th of May, 1846, (*Session acts*, p. 16,) authorized the President to increase the army by increasing each company to one hundred privates, and the enlistments to be made for the purpose are to "be for the term of five years and no longer, *unless sooner disbanded by the President*." The increase was to be made when the President thought "the exigencies of the public service" required it, and he was to reduce it when such exigencies ceased.

Under this power, when the war ended, the reduction was made; and in making it, as he clearly had the right to do, he caused to be discharged some of those who were enlisted before May, 1846, as well as some who were after-

wards enlisted. The claimant was among the former. The power to reduce was thought to be (and I think properly) independent of the character of the enlistment. The effect clearly was, to place those enlisted prior to the act of 1846, and those enlisted under that act upon the same footing as those enlisted after, as far as a discharge before the expiration of the term of enlistment was concerned. The consequence of this clearly was, to make the enlistment of both classes to be for five years, "unless sooner disbanded by the President." The latter qualification was, by the act of 1846, made as much a part of the antecedent enlistments as of those it authorized. This being the case, it is, in my opinion, perfectly clear that the present claimant, having been discharged under the reduction provided for by that act, and such discharge having been an honorable one, is entitled to the benefit of the act of 1847, even conceding the view of the Pension Office to be right, that the terms "and who shall receive an honorable discharge," found in the first part of the 9th section of the act, mean only a discharge at the end of the enlisted term, if he was so discharged. His term of service after the act of 1846 was five years, unless sooner disbanded by the President. If so disbanded, that was the expiration of his term of enlistment. But, in addition to all this, unless the words of the law admitted of no other meaning, would it be just to Congress to give them that interpretation? The nation was then at war, and the purpose was, because of the war, to encourage enlistments and good conduct in the army. This is done by the incentive of the promised bounty. The soldier is told: enlist, serve during the war, and be honorably discharged, and the bounty is yours. The pledge of the public faith is apparently complete. Now, if the construction of the Pension Office is the sound one, is it not clear that this pledge is but a false and deceitful instead of a fair one? Service, says the office, during the entire term of enlistment, is necessary, unless a prior discharge is caused by wounds or sickness. Before the term expires, then, (which may well happen, and in the present instance did happen,) Congress may direct or authorize the disbanding the army. Is it possible, in that event, the soldier having fully complied, up to his discharge, with his part of the engagement, and been prevented, against his will and by the act of the government, from complying throughout, that he is not to be entitled to demand compliance on the part of the government? Every principle of justice and fair dealing is on the side of such a demand, and it cannot be that Congress designed to deny it. Upon the

whole, then, I am of opinion that the claim of Hasson should be allowed.

REVERDY JOHNSON.

To the SECRETARY OF THE INTERIOR.

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Although a soldier be not mustered into service with his company, if the term of his service be stated when he is finally mustered out, this shall be conclusive.

DEPARTMENT OF THE INTERIOR, *November 12, 1849.*

SIR: I herewith return the papers in the case of Jesse E. Davis, and have to inform you that I am of the opinion that he should be allowed land bounty under the act of February 11th, 1847.

Although he was not mustered into service at the time his company was, yet at the final muster of the company out of service, on the 8th of August, 1846, he is borne on the rolls, as having served from May 14th to August 5th, 1846, and regularly mustered out of service.

T. EWING.

J. L. EDWARDS, Esq.

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The death of a soldier after having fulfilled his engagement but before receiving his discharge, shall not invalidate his claim to bounty land.

DEPARTMENT OF THE INTERIOR, *February, 28, 1850.*

SIR: I have examined the papers in the case of John F. Talbert, deceased, who was a private in the company of Captain Conner, of the Texas mounted volunteers.

It appears that the act of March 16, 1802, gives a pension to the soldier "who shall be disabled by wounds, or otherwise, while in the line of his duty in public service." The act of February 11, 1847, giving bounty land to soldiers, does not follow the language of the above act. It gives the bounty land to soldiers who having served to the end of the war, shall receive an honorable discharge, or who may be discharged in consequence of wounds received "in the course of such service, or to the heirs of such as shall have been killed, or died of wounds received, or sickness incurred *in the course of such service,*" omitting the restriction words "*in the line of his duty.*"

This change of phraseology cannot be presumed to be accidental. It was doubtless intended to save all inquiry as to the manner in which wounds were received, diseases contracted, or death occasioned, provided it was in the course of the service—that is, while the soldier was in the service and subject to duty. This construction is more reasonable as it is for the enlistment and service, and not for the wounds, disease, or death that the bounty is given. The soldier undertook on his part to serve to the end of the war, if he

were able to do so, and the Government undertook to give him the bounty land if he so served, and if he became unable to serve by reason of wounds received, disease incurred, or if he shall be killed in the course of his service. This soldier had served through the war; he had earned his land, was waiting for his discharge when he was killed in an affray. His death rendered his discharge impossible and it is a substitute for it. His heirs on full proof are entitled to the bounty land.

T. EWING.

J. L. EDWARDS, Esq.

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A soldier having received a discharge from service for alleged sickness incurred before the expiration of his term, but without the statement of the cause of his discharge, may prove it by credible witnesses other than commissioned officers, if these cannot be found.

DEPARTMENT OF THE INTERIOR, *March 9, 1850.*

SIR: I herewith return the papers in the case of Elijah A. Peyton, a private of Captain Crump's company, 1st regiment Mississippi Volunteers, who claims land bounty under the act of February 11th, 1847. The only question in this case is, whether a soldier who is honorably discharged, and neither the discharge nor the rolls showing for what cause he was discharged, is entitled to bounty land, without proving that he was discharged in consequence of wounds received or diseases contracted in the service?

The claimant was discharged at Monterey by General Taylor, but no cause for his being discharged is assigned in his certificate of discharge. The roll shows that he was "discharged by order of General Taylor."

He has made an affidavit in which he states that he was discharged in consequence of sickness incurred in the service. It appears to me that inasmuch as there is no record proof of the fact, he should prove it by other testimony than his own affidavit. He has been advised by the Pension Office, that if he would prove by a commissioned officer that he was discharged in consequence of disease contracted in the service his claim would be allowed. He swears that he has made diligent search for his commissioned officers, and is unable to ascertain the residences of either of them.

I am therefore of the opinion that the evidence now on file should be held insufficient to establish the claim, but that he should be informed that the facts necessary to make out the case may be proved by credible persons though not commissioned officers.

T. EWING.

To J. L. EDWARDS, Esq.

ADJUTANT GENERAL'S OFFICE, *March 4, 1850.*

SIR: In reply to your inquiry of the 28th February, in regard to the discharge of Elijah A. Peyton, private from company H, 1st regiment Mississippi volunteers, viz: whether "a soldier could according to the course of things in the army at that time have been honorably discharged except for the causes named in the Statute, such as *sickness, wounds, or some meritorious service?*" I have respectfully to inform you that discharges were sometimes given for urgent private reasons, or to minors and others on the application of their friends, and in all such cases the discharges were considered as "*honorable*" unless forfeited by some crime or misconduct, though the soldier having been released from his agreement before the expiration of his service for his own private benefit was not considered as entitled to the bounty land or three months extra pay. I return the papers in the case.

R. JONES.

Hon. T. EWING.

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The war with Mexico commenced on the 24th April, 1846.DEPARTMENT OF INTERIOR, *June 10, 1850.*

SIR: I have examined the question submitted to me in your letter of the 5th instant, "when did the war with Mexico begin?" and find that on the 24th April, 1846, General Arista addressed a letter to General Taylor in which he gave notice that he "considered hostilities commenced and should prosecute them."

On the same day a party of Americans under Captain Thornton, sent to watch the course of the Rio Grande, became engaged with a large party of Mexicans, and after a short affray in which some sixteen men were killed and wounded, were compelled to surrender.

These facts were made known to the President by General Taylor, by a dispatch bearing date 26th April, 1846. On receipt of this dispatch its contents were communicated to Congress by the President, with a message in which he says that "Mexico has proclaimed that hostilities have commenced and that the two nations are now at war." Whereupon Congress by the act of 13th May, 1846, recognized war as existing with Mexico, and made provision for carrying on said war.

This in my opinion fixes, authoritatively, the commencement of the war on the 24th of April, 1846.

T. EWING.

J. L. EDWARDS, Esq.

As the Mexican war closed on the 30th of May, 1848, a soldier who enlisted after that date is not entitled to the Bounty Land provided by the act of 1847.—*Decision Secretary of the Interior.*

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Soldiers entitled to bounty lands under the act of the 11th February, 1847, who have not received warrants therefor, cannot dispose of their rights to such land or scrip by will.

ATTORNEY GENERAL'S OFFICE, June 28, 1850.

SIR: The question you have submitted to this office, upon the 9th section of the act of the 11th February, 1847, (*Session laws, p. 125,*) has been considered. It is, whether the soldier to whom bounty is promised by this section can dispose of it by last will, when he dies before the certificate or warrant issues to him? I think not.

The construction of the Pension Office has, I understand, been uniformly in accordance with this view; and, in my opinion, that construction is the proper one. Neither the words of the law, nor its object, admit of any other. In the contingency of the death, which the question assumes, the direction of the law is positive that the "certificate or warrant shall be issued in favor, and enure to the benefit, of his (the soldier's) family or relations," according to certain prescribed rules of priority.

The supplementary act of the 27th of May, 1848, (*Session laws, p. 232,*) changes these, but not so as to affect this question.

It also directs that "all sales, mortgages, powers, or other instruments of writing, made or executed prior to the issue of such warrant or certificate, shall be null and void to all intents and purposes whatsoever," and that the land shall not, in the hands of the family, "be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by the soldier prior to the issuing of such certificate or warrant."

The clear design was to secure the bounty to the family of the deceased in all cases where that event should occur antecedent to the actual grant to him of the title. The whole was but bounty. It was for Congress to give it at once and absolutely to the soldier, or qualifiedly, or conditionally. They have manifestly designed to vest the entire bounty in the family in all cases of death before, by being actually granted to the ancestor, it becomes thereby absolutely vested in him. With this view, they not only, in such a contingency, provide that the certificate and warrant shall "be issued in favor and enure to the benefit" of the family



or relatives, but that it shall not in any way be responsible in their hands for "any debt or claim" of the ancestor, previously incurred, or be affected by any kind of contract or conveyance which he may have made.

The terms in which this last provision is made, are sufficiently comprehensive to embrace a devise, as well as a disposition to take effect in the lifetime, and, of course, exclude the bounty from its operation.

I am clear, therefore, in the opinion that the construction of the Pension Office is the correct and the only one of which the section is susceptible. REVERDY JOHNSON.

To the SECRETARY OF THE INTERIOR.

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Sickness preventing a soldier from being mustered into service, shall not invalidate his claim to bounty land.

DEPARTMENT OF INTERIOR, *July 1, 1850.*

SIR: I herewith return the papers in the case of James Thompson, private in the company of Captain Gillespie, 1st regiment of Texas mounted volunteers, and I am of the opinion that his land bounty should be allowed, as sickness, and his being in the hospital in Camargo, was the reason why he was not mustered into the service with the other members of his company. T. EWING.

JAMES L. EDWARDS, Esq.

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The mother of illegitimate children may inherit from them.

DEPARTMENT OF THE INTERIOR, *July 5, 1850.*

SIR: I herewith return the papers in the case of Thomas Turner, deceased, who was a private in the company of Captain Caldwell, of the regiment of Voltigeurs. I think if satisfactory evidence is adduced that said Thomas Turner is an illegitimate child, and that Martha Ann Thompson is his mother, the warrant, No. 65,642, issued on the 30th October, 1849, should be cancelled, and a certificate of location should be issued in the name of the said Martha Ann Thompson, as the mother and heir-at-law of the said Thomas Turner. It is a well-known maxim of law, that in no case can a putative father inherit from a son; in fact he does not, in law, bear the legal relation of father at all. You will be pleased to give the proper notification to the Commissioner of the General Land Office. T. EWING.

COMMISSIONER OF PENSIONS.

## INSTRUCTIONS AND FORMS

To be observed by persons applying to the Pension Office for bounty land under the act of February 11, 1847, for service in the Mexican war, or for money in lieu of land, under act of March 3, 1849.

PENSION OFFICE, *March 4, 1847.*

In order to carry into effect the provisions of the ninth section of the act of 11th February, 1847, the Secretary of War has directed that the following regulations shall be observed :

It will be observed, on reading the ninth section of the law which accompanies these regulations, that there are six classes of persons provided for, viz :

1. Those non-commissioned officers, musicians, and privates of the regular army who have served, or may serve, in Mexico during the present war with that country, and who have served out the full period of their enlistment, and have been honorably discharged, or who may have been, or may be, honorably discharged before the expiration of the period of their enlistment, in consequence of wounds received, or sickness incurred, in the course of such service.

2. The representatives of such persons as are mentioned in the preceding paragraph, who may die in the service, or after being discharged, and before the issuing of a certificate or warrant.

3. Non-commissioned officers, musicians, and privates, who have been mustered, or may be mustered, for twelve months, in any volunteer company, who have served, or may serve, until the end of the war with Mexico, and have been, or may be, honorably discharged by reason of their enlistment, or in consequence of disability from wounds received, or sickness incurred, in said service.

4. The representatives, as designated by the act, of such volunteers as shall have died, or may die, in the service, or after having been honorably discharged, and before the issuing of a warrant or certificate.

5. Volunteers received into the service since the commencement of the Mexican war, for less than twelve months, who shall have marched to the seat of war, and shall have served until honorably discharged.

6. The representatives, as designated in the act, of volunteers received into the service for less than three months, and who may have died in the service, or after having been honorably discharged, and before the passage of this act.

In order to substantiate a claim for land or scrip, under the provisions of the foregoing section of the act, the persons described in the first class of these regulations will send

to, or deposit with, the Commissioner of Pensions, Washington City, evidence of enlistment, service, and honorable discharge, as required by law. The best evidence on these points is held to be the original discharge of the applicant, which must, in all cases, be produced if in existence, accompanied by the applicant's affidavit, (vide form marked A,) setting forth that he is the identical person mentioned in the discharge; and in case of the loss or destruction of the discharge, the applicant will make oath to the fact, and produce the affidavit of some creditable witness in corroboration of his statement. The claimant must set forth the regiment and company to which he belonged; the time of entering the service; the time, place, and manner of his leaving the same; and he must show, by the testimony of a commissioned officer, that he was honorably discharged.

In case the claimant should desire scrip instead of land, he must make his request in writing, according to the form marked B, accompanying these regulations.

The rules in the paragraphs immediately preceding, are applicable to volunteers mentioned in classes Nos. 3 and 5.

The representatives of deceased soldiers and others, as mentioned in classes 2, 4, and 6, must produce evidence of the enlistment, service, and death of the original claimant. If the soldier was discharged, the discharge must be produced, if in existence. If not, the same proof will be required as in other cases of lost discharges; and if he died in the service, the certificate of his captain or other officer who commanded the company to which he belonged, must be produced.

The persons who may claim must produce evidence of their relationship to the deceased, and show the degree of consanguinity they bore to him. This proof must be drawn in conformity with the form marked C, and may be taken before any court having probate jurisdiction, or any officer authorized by law to administer oaths for general purposes. In case the father claims, he must show that no wife or child of the deceased is living; and in case the mother claims, she must show that neither the wife, child, nor father of the deceased is living.

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It is proper to state, for the information of claimants under the act of February 11, 1847, that, in every instance in which a volunteer soldier was discharged on a surgeon's certificate, that paper must be sent to the Pension Office, unless it has been otherwise disposed of. If lost, he should state the fact under oath.

The official character and signature of the magistrate who may administer an oath must be certified by the proper officer, under his seal of office.

The relinquishment of the right to bounty land must be signed by the claimant, if he wishes to receive scrip in lieu of land, and the relinquishment must be witnessed by some one who writes a legible hand.

Volunteers in some cases have been discharged from the service without ever having received a certificate to that effect from the officer who discharged them. Such cases have occurred where an entire regiment has been mustered out of service. In such a case the claimant must make the oath of identity required by the regulations, and add to the statement of his service the following words: "I never received any discharge. The regiment to which I belonged was mustered out of the service."

No assignment of land or scrip can be made until after a land warrant has been issued from the Pension Office, or a certificate of scrip, as the case may be.

As there were some six months' volunteers, who did not march to the seat of war, it is necessary that every soldier who was so engaged should produce the certificate of the commanding officer of the regiment or company to which he belonged, showing that he was at the seat of war.

[A.]

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... in the year one thousand eight hundred and..... personally appeared before me, the undersigned, a justice of the peace for the county and..... above mentioned,..... who, being duly sworn according to law, declares that he is the identical..... who was a..... in the company commanded by Captain..... in the regiment..... commanded by.....; that he enlisted on the..... day of....., for the term of....., and was discharged at..... on the..... day of....., by reason of.....

SWORN TO AND SUBSCRIBED before me, the }  
day and year above written, }  
....., J. P.

The discharge of a soldier, if he has one, must in every case accompany the above affidavit.

[B.]

[Residence and date.]

SIR: I request that my claim to bounty land, under the ninth section of the act of the 11th February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," may be examined; and if I am entitled to land, I wish to relinquish, and do hereby relinquish, my right thereto, and in lieu thereof to receive a Treasury scrip for one hundred dollars, (or twenty-five dollars, as the case may be.)

In presence of,.....  
To the COMMISSIONER OF PENSIONS,.....

[C.]

It is hereby certified that satisfactory proof has been exhibited before the..... for the county of..... in the State of....., by the affidavits of..... and..... who are persons entitled to credit, that..... and..... are the only surviving children of..... who was a..... in the United States service.

IN TESTIMONY WHEREOF, I have set my hand and seal of office this..... day of....., in the year of.....  
....., of the Court.

Every person applying for bounty land, or money in lieu thereof, must send his discharge to the Pension Office, if he ever received one, and has it in his power to send it. If his discharge has been lost or destroyed, he must swear to the

fact of its loss or destruction. If discharged on surgeon's certificate of disability, that certificate must be sent with the discharge, unless it has been otherwise disposed of; in which case, it must be shown how it has been disposed of.

Volunteers in some cases have been discharged from the service without ever having received a certificate to that effect from the officer who discharged them. Such cases have occurred where an entire regiment has been mustered out of the service. In such a case, the claimant must make the oath of identity required by the regulations, and add to the statement as to his service the following words: "I never received any discharge. The regiment to which I belonged was mustered out of the service."

In case the claimant should desire money instead of land, he must make his request in writing, according to the following form, and he must sign it, and the same must be witnessed by some one who writes a legible hand.

#### REQUEST FOR MONEY.

[*Residence, date, 1849.*]

SIR: I request that my claim to bounty land, under the ninth section of the act of the 11th of February, 1847, entitled "An act to raise for a limited time an additional military force, and for other purposes," may be examined; and if I am entitled to land, I wish to relinquish, and do hereby relinquish, my right thereto, and in lieu thereof, to receive one hundred dollars, (or twenty-five dollars, as the case may be.)

[Signed.] .....

In presence of, .....  
To the COMMISSIONER OF PENSIONS.

No copy of a discharge, or any other paper, can be admitted as evidence, unless the original be on file in some public office; in which case a duly certified copy from the office where the original is on file must be produced.

Every applicant for bounty land or scrip\* must swear to

\*The following description of persons are not entitled to land, or money in lieu thereof: 1. Those who are discharged for disability not incurred while in the service. 2. Those volunteers who did not march to the seat of war. 3. Those who deserted. 4. Those who were not honorably discharged. 5. Those who were discharged at their own request. 6. Rejected recruits, or persons who were not fit for service when they enlisted.

CLAIMS BY HEIRS OR REPRESENTATIVES.—The representatives of deceased soldiers, who may apply for land or money, must state in what regiment and company the deceased served, and when and where he died. If he died after he left the service, the soldier's discharge must be sent to the pension office, if in the power of the claimant to do so. If lost or destroyed, the fact must be established by an affidavit.

If the deceased left a widow and children, or child, they are jointly entitled to land; if a widow and no child, or a child or children and no widow, or the child or children, as the case may be, will be entitled to the land warrant.

If he left neither wife nor child, the father, if living, will be entitled.

If he left neither widow, child, nor father, the mother, if living will be entitled.

a declaration, before an officer duly authorized to administer oaths for general purposes, according to the following form :

CERTIFICATE OF IDENTITY.

STATE OF..... } ss.  
.....COUNTY, }

On this.....day of....., in the year one thousand eight hundred and....., personally appeared before me, the undersigned, a Justice of the Peace for the county and.....above mentioned,....., who, being duly sworn according to law, declares that he is the identical.....who was a.....in the company commanded by Captain....., in the regiment....., commanded by.....; that he enlisted on the.....day of....., for the term of....., and was discharged at.....on the.....day of....., by reason of.....  
[Signed] .....

SWORN TO AND SUBSCRIBED before me, the day }  
and year above written. }  
.....J. P.

FORM OF WIDOW'S DECLARATION.\*

STATE OF..... } ss.  
.....COUNTY, }

.....of....., makes oath and says that she is the widow of....., deceased, who was a.....in company.....of the.....regiment.....during the late war with Mexico; that the said.....died at....., on or about the.....day of.....  
A.D. 18... as she verily believes.

She further states that she was married to the said.....in....., on the.....day of....., in the year eighteen hundred and....., by one....., a....., and that her name before her said marriage was....., and that there are.....children of the said.....now living, whose names are as follows : [*Here state the names ; or, if there are no children, state that the deceased left no child or children,*] who are the only surviving children of the said....., deceased.

[Signed] .....  
SWORN TO AND SUBSCRIBED before me, on }  
this.....day of....., 18... }  
....., J. P.

If he left neither wife, child, father, or mother, the brothers and sisters, whether of the whole or half blood, will be jointly entitled, or the sole brother or sister, if there be but one.

If he left neither widow nor child, father nor mother, brother nor sister, then no person is entitled to land as his representative.

In all cases of an application by the widow, or widow and children, the widow must make a declaration under oath, stating her name before her marriage to the deceased, the time and place of her marriage, and by whom she was married to the deceased, with the time and place of the husband's death, according to the best information she has on the subject.

\*This declaration of the widow must be accompanied by *satisfactory proof of the marriage*, and of all other facts necessary to establish the claim. If married in any State or county where any public records of marriages are kept, the marriage should be proved by a duly certified copy of the record, or by the testimony of credible witnesses who were present at the marriage; and where such testimony exists, and is not produced, satisfactory reasons must be stated, under oath, why it is not produced; and in all cases where record evidence or the testimony of witnesses who were present at the marriage *could be procured and is not*, the claim will be rejected, unless other testimony of a *very full and satisfactory character* is produced. If it is shown, by affidavit, that *no record evidence or testimony of eye-witnesses can be procured*, the claimant may then produce the best other evidence in her power, such as the testimony of witnesses

## PENSION OFFICE, June 1, 1853.

For the purpose of preventing the numerous frauds that are daily attempted upon this office, the following rules, having been approved by the Secretary of the Interior, will be strictly enforced :

1. In all applications for pensions, renewals of pensions, and for bounty land, the signature of the applicant must be attested, and his or her personal identity established by the *affidavits of two witnesses*, whose residences must be given, and whose credibility must be sustained by the certificate of the court or magistrate before whom the application is verified.

2. No certificate of facts found by any court will be deemed sufficient in any case, unless the facts are certified to be within the personal knowledge of the Judge who shall sign the certificate ; or the names and places of residence of the witnesses by whom the facts are established be given ; or their affidavits, properly authenticated, be appended to the certificate.

L. P. WALDO, *Commissioner*.

DEPARTMENT OF THE INTERIOR, }  
PENSION OFFICE, January 18, 1853. }

In all applications for bounty land or for pensions, made after this date, applicants and their agents will be required to conform strictly to the following rule :

All papers necessary to be verified by oath must be sworn

who were acquainted with her and her husband during his lifetime, knew them to live together as man and wife, and that they were reputed so to be, and that the fact of their having been married was never called in question by their acquaintances.

If the claim be filed on behalf of a child or children, father, mother, brother, or sister, or brothers and sisters, the above form should be varied according to the facts of the case ; and in every case the facts necessary to establish the claim must be *proved by two witnesses*, certified by the magistrate, before whom the testimony is taken, to be credible witnesses, and who must also swear that they are disinterested.


In case of a claim by a child, or children, it must be proved that the deceased left no widow, and no other child save those named in the application.

In case of a claim by the father, it must be proved that no widow or child of the deceased is living.

In case of a claim by the mother, it must be proved that there is no widow, child, or father living.

In case of a claim by a brother or sister, or brothers and sisters, it must be proved that there are neither widow, child, father, or mother of the deceased living, nor any other brother or sister save those named in the application.

All affidavits must be *subscribed by the witnesses*, and certified by the justice of the peace or other officer before whom the testimony is taken. The officer must also certify that the witnesses are credible persons.

 The official character and signature of the magistrate who may administer the oath must be certified by the proper officer, under his seal of office. Such a certificate must accompany every case.

to before, and certified and authenticated by, proper public officers, who have no interest in the result of the case, and are not concerned in its prosecution; and every such public officer must set forth in his certificate that he is *not so interested* or concerned.

Papers prepared in violation of this rule will be rejected for that cause.

L. P. WALDO,  
*Commissioner.*

As the foregoing circulars alter materially the form of application and proofs, it is advised that claimants under this act should prepare their applications so as to correspond with the following forms :

DECLARATION FOR SURVIVING SOLDIERS.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of....., A.D. 185., before me, the undersigned, a....., duly authorized by law to administer oaths within and for the county and State aforesaid, personally appeared.....aged.....years, a resident of.....in the county of....., and State of.....; who being duly sworn according to law, declares that he is the identical.....who was a.....in the company.....commanded by Captain.....in the regiment....., commanded by....., in the war with the Republic of Mexico.

That he enlisted or entered the service at....., about the.....day of....., A.D. 18.., for the term of....., and was honorably discharged at....., on the.....day of....., A.D. 18... That he cannot file herewith his certificate of discharge for the reason that.....

He makes this declaration for the purpose of obtaining the.....bounty land to which he may be entitled on account of said service, under the act passed 11th February, 1847.

He hereby appoints.....his true and lawful attorney, with power of substitution, to prosecute this his claim for land, to receive the certificate or warrant when issued, and to do all other acts necessary and proper in the premises.

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent,....., and believe him to be the identical man who served as is above stated, and that he is of the age above stated; and further, that I am not interested in this claim as attorney or otherwise.

STATE OF..... }  
COUNTY OF..... } ss.  
TOWN OF..... }

On this.....day of....., A D. 18.., before me, the subscriber, a.....in and for said county, duly authorized to administer oaths, personally came.....aged.....years, and.....aged.....years, whom I know to be residents of the county and State aforesaid, and persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw.....execute the foregoing affidavit by signing his name to the foregoing declaration, and making oath thereto in due form of law; and they further swear that they are acquainted with the said....., now present, and have every reason to believe from the appear-



ance of the applicant, that he is the identical person he represents himself to be ; and further, that they, deponents, do reside in the county aforesaid.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, this }  
 ..... day of....., A.D. 18... }  
 ..... J. P.

STATE OF..... } ss.  
 COUNTY OF..... }

I HEREBY CERTIFY, that ....., Esq., before whom the foregoing declarations and power of attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... Court, for the county aforesaid, this..... day of....., 185....., Clerk of.....

#### DECLARATION FOR WIDOW, &c.

STATE OF..... } ss.  
 COUNTY OF..... }

On this..... day of....., A.D. 185., before me, the undersigned, a....., duly authorized by law to administer oaths within and for the county and State aforesaid, personally appeared....., aged..... years, a resident of....., in the county of....., and State of.....; who being duly sworn according to law, declares that she is the widow of....., deceased, who was a..... in the company....., commanded by Captain....., in the regiment....., commanded by....., in the war with the Republic of Mexico.

That her husband entered the service at....., about the..... day of....., A.D. 18..., for the term of....., and was honorably discharged at..... on the..... day of....., A.D. 18...

She further states that she was married to the said..... in....., State of....., on the..... day of....., A.D. 18..., by one....., a.....; and that her name before her said marriage was.....; that her husband died at..... on the..... day of....., A.D. 18..., and that she is still his widow, and the following are the names and ages of all her children, viz:.....

And she further states that there is..... public record of her marriage—and that there is..... private record of her marriage..... That she cannot file herewith his certificate of discharge for the reason that.....

She makes this declaration for the purpose of obtaining the bounty land to which she may be entitled on account of said service, under the act passed 11th February, 1847.

She hereby appoints..... her true and lawful attorney, with power of substitution, to prosecute this her claim for land, to receive the certificate or warrant when issued, and to do all other acts necessary and proper in the premises.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent,....., and believe her to be as is above stated, and that she is of the age above stated ; and further, that I am not interested in this her claim as attorney or otherwise.  
 ..... J. P.

STATE OF..... } ss.  
 COUNTY OF..... }

On this..... day of....., A.D. 185., personally appeared before the subscriber, a Justice of the Peace, in and for the county aforesaid, duly author-

ized to administer oaths, . . . . ., a resident of said county, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs. . . . . ., the above named applicant for bounty land—that he has known her for . . . . . years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be the “ . . . . .,” and printed in the year . . . . .; and that the said record is as follows, which is an exact copy of the same, and of the whole of said record : . . . . .; and that the said deponent is not interested in the claim.

SUBSCRIBED AND SWORN TO, the day and year }  
first above written, before me, and I certify that }  
I am in no manner interested. }  
 . . . . ., J. P.

STATE OF . . . . . } ss.  
COUNTY OF . . . . . }

On this . . . . . day of . . . . ., A.D. 185 . . . , personally appeared before me, the undersigned, a Justice of the Peace, in and for said county . . . . ., and . . . . ., who are to me well known, and who are credible witnesses, and who being by me duly sworn, depose and say, that they are each well acquainted with Mrs. . . . . ., the above applicant for bounty land—that they have known her for . . . . . years last past. That they were acquainted with . . . . ., her late husband, having known him for . . . . . years previous to his death; that they, the said . . . . . and . . . . . lived together as husband and wife, and were reputed so to be, that deponents never heard the fact of their marriage disputed or questioned. That the said . . . . . died on the . . . . . day of . . . . ., 18 . . . ; and the said . . . . . has been since that day, and still is reputed to be his widow, which deponents believe to be the fact. That the following are the names and ages of all her children, viz : . . . . . That she has never married since her said husband's death, and still is his widow, and that her said husband was the identical man mentioned as a soldier . . . . . in her declaration above, and further, that they were present and saw . . . . . execute the foregoing affidavit by . . . . . to the foregoing declaration, and making oath thereto in due form of law, and further, that they, deponents, do reside in the county aforesaid.

WITNESS : . . . . .  
 . . . . .

SWORN TO AND SUBSCRIBED before me, this }  
 . . . . . day of . . . . ., A.D. 18 . . . }  
 . . . . ., J. P.

§ STATE OF . . . . . } ss.  
COUNTY OF . . . . . }

I HEREBY CERTIFY, that . . . . ., Esq., before whom the foregoing affidavits and power of attorney were made and acknowledged, and who has therunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signatures thereto are genuine.

IN TESTIMONY WHEREOF, I have herunto set my hand and affixed the seal of . . . . . Court, for the county aforesaid, this . . . . . day of . . . . ., 18 . . .  
 . . . . ., Clerk of . . . . .

## BOUNTY LAND.—SERVICE IN CALIFORNIA.

UNDER ACT OF AUGUST 5, 1854.

For those who served in the military service of the United States in California, during the late war with Mexico, whether under the command of naval or military officers, etc.

The preceding forms, under act of 11th February, 1847, are applicable to claims for land under this act. The following circular of the Commissioner of Pensions gives the construction of the act by the Department as far as relates to the land bounty.

## PENSION OFFICE, . . . . ., 1854.

SIR : In answer to your inquiry as to the construction of the 4th section of the act of August 5, 1854, I have to inform you, that this section directs "the Secretary of War to receive and cause to be placed on the files of his Department such additional muster rolls of the battalion of volunteers, commanded by Lieut. Colonel J. C. Frémont, in California, duly authenticated by the proper officers, as have not heretofore been received and filed, and to cause such corrections of the muster rolls to be made in regard to the periods of enlistment and terms of service, and the omission of names of the members of said battalion, as, upon satisfactory proof, he may deem right and proper; and as far as practicable to correspond with the pay rolls of Major P. B. Reading, paymaster of said battalion, with respect to the period of service, so that all who served in the military service of the United States in California, during the late war with Mexico, whether under the command of naval or military officers, may be entitled to all the benefits of all the acts of Congress providing for the enrolment of volunteers in the Mexican war."

It is apparent that the principal, if not the only object, of the foregoing provisions, is to procure the correction of the muster rolls of the battalion of volunteers commanded by Col. J. C. Frémont in California, so that all who served under his command may receive the same benefits a part of his battalion have already received. To effect this, the Secretary of War is authorized to receive additional muster rolls, duly authenticated by the proper officers, cause corrections of the same to be made in regard to periods of enlistment, terms of service, and omission of names, and, as far as prac-

licable, to make them correspond with the pay rolls of Maj. P. B. Reading, with respect to the periods of service.

When these rolls are thus perfected, the persons whose names shall be found thereon, whether they have served under naval or military officers, are to receive all the benefits of all the acts of Congress providing for the enrolment of volunteers in the Mexican war. These benefits are the three months' extra pay, provided by the act of July 19, 1848, and land bounty promised by the act of February 11, 1847; So far as the land is concerned, the law will be executed in this bureau; and when it shall appear from the said corrected rolls that the claimant shall have served one year in the military service in California during the late war with Mexico, he will be entitled to receive a warrant for one hundred and sixty acres of land; and when he shall have served a less period, he will be entitled to receive forty acres. The form of application for these benefits, and the verification of the papers, will be the same as that now used under the act of February 11, 1847.

Very respectfully,

L. P. WALDO,  
*Commissioner.*

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## BOUNTY LAND.

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ACTS OF SEPTEMBER 18, 1850, AND MARCH 22, 1852.

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By the third section of the "Act making appropriations for the support of the army, for the year ending the thirtieth of June, one thousand eight hundred and fifty-five," it is provided that these acts, shall not be so construed as to deprive any widow from the benefits therein granted for the services of her husband, though she may have married again: *Provided*, That the applicant is a widow at the time of making the claim.

The act of September 28th, 1850, provides land under certain restrictions to those who had served in the field during some declared or recognized war, since seventeen hundred and ninety. The act of March 22d, 1852, provides land to the militia or volunteers, or State troops of any State or Territory called into military service, and whose services have been paid by the United States subsequent to the 18th June, 1812.

The forms of declaration, following the decisions, will be found applicable to claims under either act.

## BOUNTY LAND.

ACT OF 28th SEPTEMBER, 1850.

AN ACT granting Bounty Land to certain officers and soldiers who have been engaged in the Military service of the United States.

APPROVED, SEPTEMBER 28, 1850.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians, or privates, whether of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company, or detachment, in the service of the United States, in the war with Great Britain, declared by the United States on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and each of the commissioned officers who were engaged in the military service of the United States in the late war with Mexico, shall be entitled to lands, as follows: Those who engaged to serve twelve months or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres: *Provided*, That wherever any officer or soldier was honorably discharged in consequence of disability in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve: *Provided*, The person so having been in service shall not receive said land, or any part thereof, if it shall appear, by the muster rolls of his regiment or corps, that he deserted, or was dishonorably discharged from service, or if he has received, or is entitled to, any military land bounty under any act of Congress heretofore passed.

SEC. 2. *And be it further enacted*, That the period during which any officer or soldier may have remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so detained in captivity shall receive land under the provisions of this act in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and had served during such time.

SEC. 3. *And be it further enacted*, That each commissioned

and non-commissioned officer, musician, or private, for whom provision is made by the first section hereof, shall receive a certificate or warrant from the Department of the Interior for the quantity of land to which he may be entitled, and which may be located by the warrantee or his heirs-at-law, at any land office of the United States, in one body and in conformity to the legal sub-divisions of the public lands, upon any of the public lands in such district then subject to private entry; and upon the return of such certificate or warrant, with evidence of the location thereof having been legally made to the General Land Office, a patent shall be issued therefor. In the event of the death of any commissioned or non-commissioned officer, musician, or private, prior or subsequent to the passage of this act, who shall have served as aforesaid, and who shall not have received bounty land for said services, a like certificate or warrant shall be issued in favor, and inure to the benefit of his widow, who shall receive one hundred and sixty acres of land in case her husband was killed in battle, but not to her heirs: *Provided*, She is unmarried at the date of her application: *Provided further*, That no land warrant issued under the provisions of this act shall be laid upon any land of the United States to which there shall be a pre-emption right, or upon which there shall be an actual settlement and cultivation, except with the consent of such settler, to be satisfactorily proven to the proper land officer.

SEC. 4. *And be it further enacted*, That all sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant or certificate issued, or to be issued, or any land granted, or to be granted, under the provisions of this act, made or executed prior to the issue, shall be null and void to all intents and purposes whatsoever; nor shall such certificate or warrant, or the land obtained thereby, be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by such officer or soldier, prior to the issuing of the patent: *Provided*, That the benefits of this act shall not accrue to any person who is a member of the present Congress: *Provided, further*, That it shall be the duty of the Commissioner of the General Land Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to the General Land Office for that purpose in such State and land district as the said holder or warrantee may designate, and upon good farming land, so far as the same can be ascertained from the maps, plats, and field notes of the sur-



veyor, or from any other information in the possession of the local office, and, upon the location being made as aforesaid, the Secretary shall cause a patent to be transmitted to such warrantee: *And provided further*, That no patent issued under this act shall be delivered upon any power of attorney or agreement dated before the passage of this act, and that all such powers of attorney or agreements be considered and treated as null and void.

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AN ACT to make Land Warrants assignable and for other purposes.

APPROVED, MARCH 22, 1852.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That all warrants for military bounty land, which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are hereby declared to be assignable, by deed or instrument of writing made and executed after the taking effect of this act, according to such form, and pursuant to such regulations as may be prescribed by the Commissioner of the General Land Office, so as to vest the assignee with all the rights of the original owner of the warrant or location: *Provided*, That any person entitled to pre-emption right to any land shall be entitled to use any such land warrant, in payment for the same, at the rate of one dollar and twenty-five cents per acre, for the quantity of land therein specified: *Provided*, That the warrants which have been, or may hereafter be, issued in pursuance of said laws or of this act, may be located according to the legal subdivisions of the public lands, in one body, upon any lands of the United States, subject to private entry at the time of such location, at the minimum price: *Provided further*, That when said warrant shall be located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator of said warrants shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on.

SEC. 2. *And be it further enacted*, That the registers and receivers of the land offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants issued since the eleventh day of February, eighteen hundred and forty-seven, the same compensation or per centage to which they are entitled by law for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre, the said com-

pensation to be hereafter paid by the assignees or holders of such warrants.

**SEC. 3.** *And be it further enacted,* That registers and receivers, whether in or out of office at the passage of this act, or their legal representatives in case of death, shall be entitled to receive from the treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers under the act entitled "An act to require the holders of military land warrants to compensate the land officers of the United States for services in relation to the location of those warrants," approved May seventeenth, eighteen hundred and forty-eight: *Provided,* That no register or receiver shall receive any compensation out of the treasury for past services, who has charged and received illegal fees for the location of such warrants: *And provided, further,* That no register or receiver shall receive for his services during any year a greater compensation than the maximum now allowed by law.

**SEC. 4.** *And be it further enacted,* That in all cases where the militia or volunteers, or State troops of any State or Territory, were called into military service, and whose services have been paid by the United States subsequent to the eighteenth of June, eighteen hundred and twelve, the officers and soldiers of such militia, volunteers, or troops, shall be entitled to all the benefits of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States;" approved September twenty-eighth, eighteen hundred and fifty, and shall receive lands for their services according to the provisions of said act, upon proof of length of service as therein required, and that the last proviso of the ninth section of the act of the eleventh of February, eighteen hundred and forty-seven, be, and the same is hereby, repealed: *Provided,* That nothing herein contained shall authorize bounty land to those who have heretofore received or become entitled to the same.

**SEC. 5.** *And be it further enacted,* That where any company battalion or regiment, in an organized form, marched more than twenty miles to the place where they mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment, was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion or regiment, with a view to determine

the quantity of land any officer or soldier is entitled to under said act, approved twenty-eighth of September, eighteen hundred and fifty, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment, was organized, to the place where the same was mustered into the service of the United States, and also one day for every twenty miles from the place where such company, battalion, or regiment, was discharged, to the place where it was organized, and from whence it marched, to enter the service.

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AN ACT to repeal the first proviso of the fourth section of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September twenty-eighth, one thousand eight hundred and fifty.

APPROVED, AUGUST 4, 1854.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the first provision of the fourth section of the act entitled "An act granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," approved September twenty-eighth, one thousand eight hundred and fifty, be, and the same is hereby, repealed.

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The first proviso of the fourth section of the act of 28th September, 1850, repealed by the above act, is in the following words, viz :

"*Provided, That the benefits of this act shall not accrue to any person who is a member of the present Congress.*"

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#### INSTRUCTIONS AND DECISIONS.

In every application for the benefit of the act aforesaid, whether made by the surviving officer or soldier himself, or by his widow or minor child or children, a declaration, under oath, must be made.

Such declaration, and all affidavits, must be sworn to before some justice of the peace or other officer authorized to administer oaths for general purposes, who must certify the same.

The official character and signature of the magistrate who may administer the oath, must be certified by the clerk of the proper court of record of his county, under the seal of the court. *Such certificate must accompany every case.*

In every instance where the certificate of the certifying officer who authenticates the paper, is not written on the

same sheet of paper which contains the affidavit or other papers authenticated, the certificate must be attached thereto by a piece of tape or narrow ribbon, the ends of which must pass under the official seal, so as to prevent any paper from being improperly attached to the certificate.

If any officer or soldier, who would be entitled to bounty land under said act if living, has died leaving no widow who still survives him, but leaving a child or children under the age of majority, such minor child or children are entitled to the same quantity of land that the father would be entitled to if living, in case the child or children have not attained their majority prior to the date of the issue of the warrant.

In such case the *guardian* of such minor child or children must make a declaration as nearly corresponding with the foregoing forms as the nature of the case will admit. He must state the time of the father's death; the fact that no widow survives him; and must state the *name* or *names*, and *age* or *ages* of his surviving minor child or children.

This declaration must be accompanied by *satisfactory proof* of the father's death, that no widow survives him, the ages of the minor children, and his own appointment, by competent authority, as guardian. If there is any *family record* showing the ages of the children, it, or a certified copy of the same, should be forwarded, with the affidavit of some disinterested person, proving the genuineness of the original, and that the copy certified is a true and correct copy of it.

In such declaration the signature of the applicant must be attested, and his or her personal identity established by the affidavits of two witnesses, whose residences must be given, and whose credibility must be sustained by the certificate of the magistrate before whom the application is verified.

No certificate of facts will be deemed sufficient in any case, unless the facts are certified to be within the personal knowledge of the magistrate or other officer who shall sign the certificate; or the names and places of residence of the witnesses by whom the facts are established be given, and their affidavits, properly authenticated, be appended to the certificate.

As the act of 1850 grants bounty land to "each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned *officers, musicians* and *privates*," those applying for this bounty upon services rendered in any other capacity must furnish satisfactory proof that they were regularly detailed from the line for that particular purpose; and members of the marine corps must have *served*

*with the army in the field*, in the several wars referred to in the act of 1850, as a portion of the army, in order to give them the benefits of the act.

When the name of a person on whose service a claim is asserted is not found on the rolls of the company designated, or of some other company of the same regiment or corps, the testimony of persons who were in a situation to know the facts about which they testify will be received to prove the service; but in no case will any testimony be allowed to vary or discredit the length of service shown by the rolls.

When no rolls of a company in which service is alleged to have been rendered are found in the files of the proper department, satisfactory proof of payment for such services by the United States will be required; and in that case the positive testimony of at least two witnesses who have received bounty land for the same service, or who were in a position to know the facts about which they testify, will be required to establish the service of the claimant.

Where a party dies *before* the issue of his land warrant under the act of 28th September, 1850, the right to it dies with him, unless there be a widow, or children who are minors at the time of the issue of the land warrant. If he left a widow, the application may be renewed in her name; or if none, then in the names of such minor children. If there be neither widow nor *minor* children, no right vests in any one.

If the claimant die *after* the issue of the warrant, the title thereto vests in the heirs in the same manner as real estate, and can be assigned only by those who could convey a tract of land descended from the ancestor.

Where the service has been rendered by a substitute, he is the person entitled to the benefit of the law, and not his employer; and where his name does not appear on the rolls as such, an affidavit to that effect of the person who employed him should be furnished.

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## DECISIONS OF THE SECRETARY OF THE INTERIOR

RELATIVE TO APPLICATIONS FOR LAND BOUNTY, UNDER ACTS OF  
28TH SEPTEMBER, 1850, AND 22D MARCH, 1853.

Marines who served in any of the wars referred to in the act of 28th September, 1850, are entitled to land bounty under that act.

No person shall receive more than one warrant, though he may have performed several tours of service which would entitle several individuals, each, to a warrant.

DEPARTMENT OF THE INTERIOR, *October* 12, 1850.

SIR: In reply to your letter of the 7th inst., I have to inform you that where any portion of the marine corps in

the several wars referred to in the act of the 25th of September, 1850, were embodied with the army in the field, and performed service as a portion of the line of the army, they are entitled to the benefit of the aforesaid act.

It has also been decided, that although not expressly provided by the terms of the law, yet its tenor throughout contemplates that the same person shall not receive more than one warrant, although he may have performed service which, if rendered by several individuals, would entitle each to a warrant.

A. H. H. STUART.

J. A. HOZIER.

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A soldier on parole of the enemy, is in captivity.

DEPARTMENT OF THE INTERIOR, *October 15, 1850.*

A soldier on parole, is considered to be in "captivity to the enemy." W. A. GRAHAM, *Secretary ad interim.*

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By decision of the Secretary of the Interior of the 16th March, 1852, "the time of a soldier's captivity will be allowed as part of his service, but not the time that he was on parole.

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Guardians—their appointments.

DEPARTMENT OF THE INTERIOR, *October 15, 1850.*

The guardian of minor children, claiming under the bounty land law of 1850, should be appointed in the county and state where the children reside.

W. A. GRAHAM, *Secretary ad interim.*

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The ACT of September 28th, 1850, a *gratuity.*

DEPARTMENT OF THE INTERIOR, *October 29, 1850.*

SIR: In reply to your letter of this day, I have to inform you that there is a marked difference between the acts of 11th January, 1812, and the 11th February, 1847, and that of the 28th September, 1850.

The two former were inducements held out for the purpose of increasing the rank and file of the army, and partook of the nature of the consideration of a contract, while the latter is a gratuity or donation.

The act of 28th September, 1850, gives the land to the person "who performed military service, and actually served, or to the widow or minor children." In relation to the widows of those embraced by said act, in order to receive its benefits, they must have been widows at the time of its passage.

ALEX. H. H. STUART.

A person unheard of for seven years, is presumed by common law to be dead.

DEPARTMENT OF THE INTERIOR, *May 7, 1850.*

SIR: I have received your letter of the 4th instant, in which you submit for decision the question, whether a person who has been absent in parts unknown for seven years, is presumed to be dead?"

In reply I have to state, that, inasmuch as that is the term fixed by common law, after which the death of a person not heard of during that period is presumed, [to be dead,] I think it proper that in your decisions you should be governed by the same rule.

T. EWING.

J. L. EDWARDS, Esq.

Imbecile widow of a soldier, where no guardian has been appointed.

DEPARTMENT OF THE INTERIOR, *December 7, 1850.*

SIR: I have the honor to return herewith the letter to you from J. R. Dickenson, Esq., which was enclosed in your letter of the 6th instant, and in reply to the inquiry therein made, state that, in the case of an imbecile widow of a soldier entitled to the benefits of the bounty land law of the 28th September, 1850, the declaration and proof should be made by the guardian or committee, if one has been appointed. But the appointment of a committee or guardian is not essential for this particular purpose, and in such cases as the present, the facts required to be established may be shown by the deposition of one or more credible and disinterested persons, properly authenticated.

A. H. H. STUART.

Hon. D. S. DICKENSON.

Different terms of service by the same individual are to be consolidated, and only one warrant issued for the aggregate.

DEPARTMENT OF THE INTERIOR, *January 22, 1851.*

SIR: The question has been propounded to me, whether, if a soldier has served a tour of four months, and subsequently a tour of one month, he shall receive two warrants, one of eighty and the other of forty acres, making an aggregate of 120 acres? My first impression was, that he should receive two warrants for the two terms of service. But, upon examining the law, and considering the practical operation of the principle, I have come to the conclusion that he will be entitled to the eighty acre warrant only.

If the law had intended that intermediate quantities, between 80 and 160 acres, should be received, it would have made provision for the case.

This not having been done, I am led to believe it was not intended.

Moreover, if two warrants be allowed, the practical effect might be, that a person serving five months in two terms, might receive a larger compensation, by one half, than one who served eight months and twenty-nine days in one continued term of service. I think, therefore, that the safest plan is to adhere to the subdivisions made by the law, of 40, 80, and 160 acres, and not attempt a combination of two of them to make a new subdivision of 120 acres. You will, therefore, regard this as the regulation of the department on this point.

A. H. H. STUART.

To JAMES E. HEATH, Esq.

Soldiers engaged in the war with the Creeks, from the 5th of May to the 30th of Sept., 1836, entitled to bounty land under the act of Sept. 28, 1850.

DEPARTMENT OF THE INTERIOR, *February 26, 1851.*

SIR: After a careful examination of the second or explanatory letter from the Adjutant General, and a personal interview with the Secretary of War on the subject, I am satisfied that what the Adjutant General, in his first letter, termed "Creek disturbances no war," was really an Indian war, within the meaning of the act of September 28, 1850; and, therefore, that those persons, and the representatives of such as are dead who were engaged in it, are entitled to bounty land under its provisions.

I find that the Creek nation was in a state of open hostility to the whites; that large bodies of men were mustered into the service of the United States, under their officers, to repel the attacks of the Indians; that several engagements took place, and many lives were lost in battle; and that provision was made by the United States government for the payment of the expenses of the campaign; and, indeed, that it possessed all the characteristics of a war, except a formal declaration. Having thus a firm and legal ground to stand upon, I take great pleasure in stating to you, that I am of the opinion, that the provisions of the bounty land law of September 28, 1850, apply to those non-commissioned officers and soldiers engaged in the Creek war, which commenced May 5, 1836, and ended September 30, 1836.

A. H. H. STUART.

Hon. H. A. HARALSON, *H. of Reps.*

Bounty land warrants regularly issued, however fraudulently obtained, are valid when they have passed into the hands of innocent purchasers without notice of the fraud which has been practised.

DEPARTMENT OF THE INTERIOR, *November, 10, 1851.*

SIR: I have considered the question submitted in your letter of 18th July last, upon the cases presented by Messrs.



Chubb and Schenck, and am of the opinion that the cancellation of the warrants referred to, should be removed upon satisfactory evidence that they are in the hands of innocent purchasers, without notice of the fraud which has been practised.

They are genuine warrants, issued from your office in due form of law, and any irregularity in the evidence upon which your office acted, or any fraud practiced in procuring them, should not affect holders innocent of the irregularity or fraud.

The faith of the Government is pledged to the extent declared on the face of the warrants: and the carelessness or mistakes of public officers should work injury only to the Government which employs them, and not upon persons who act and invest their means upon the proper presumption that the business of the Government is accurately transacted. Such warrants, therefore, as are regularly issued from your office, and are shown to have passed into the hands of innocent parties, must be located and dealt with in every way as if the evidence upon which they issued was perfect. The papers accompanying your letter are herewith returned.

COMMISSIONER OF PENSIONS.

A. H. H. STUART.

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A warrant, issued after the death of the soldier, must be cancelled, and the widow or minor children to make a new application; but, if there be none, the grant lapses to the country.

DEPARTMENT OF THE INTERIOR, *December 27, 1851.*

SIR: In reply to your letter of the 26th instant, "in relation to the location of a land warrant of a deceased soldier, issued under the act of September 28, 1850," I have to inform you that the 3d section of the act provides that the warrant may be located by the "*heirs-at-law*." When the warrant is issued subsequent to the death of the soldier, under my construction of the law, the warrant becomes void and should be cancelled, and the widow or minor children if there be any, would be then entitled to make a new application; and if there be no widow or minor children, the grant lapses under the limitation of the beneficiaries to the country.

A. H. H. STUART.

HON. D. T. JONES.

Widows of soldiers who received Bounty Land for services in the war of 1812 are not entitled to land under this act.—*Decision, Nov. 10, 1853.*

In case a soldier is noted on the rolls as having *deserted*, he cannot obviate the charge by parol proof.—*Decision, June 23, 1853.*

The charge can only be removed, by order of the secretary of war, upon proof being presented to him that the roll is not correct. The rolls having been corrected, the land will be granted.

#### FORM OF APPLICATION FOR AN OFFICER OR SOLDIER.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., A.D. 18... before me, the undersigned, a..... duly authorized by law to administer oaths within and for the County and State aforesaid, personally appeared..... aged..... years, a resident of..... in the County of..... and State of.....; who being duly sworn according to law, declares that he is the identical....., who was a..... in the company....., commanded by Captain....., in the regiment....., commanded by....., in the War with.....

That he enlisted or entered the service at....., about the..... day of....., A.D. 18...; for the term of....., and continued in actual service in said War, for the term of....., and was honorably discharged at....., on the..... day of....., A.D. 18....

That he cannot file herewith his Certificate of discharge for the reason that..... In addition to the above described actual service he claims for..... miles from....., at which his company was organized, to....., where he was mustered into service, and for..... miles, from....., at which he was discharged, to..... the said place of his enrolment.

He makes this declaration for the purpose of obtaining the..... Bounty Land to which he may be entitled on account of said service, and mileage under the acts passed September 28th 1850 and March 22d 1852..... He also declares that he has not received a Warrant for Bounty Land, under this or any other Act of Congress, nor made any other application therefor.... He hereby appoints....., his true and lawful Attorney, with power of substitution, to prosecute this his claim for land, to receive the Certificate or Warrant when issued, and to do all other acts necessary and proper in the premises.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, on the day and year first above mentioned, and I hereby certify that I know the said deponent..... and believe him to be the identical man who served as is above stated, and that he is of the age stated; and further, that I am not interested in this his claim as Attorney or otherwise..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.  
TOWN OF..... }

On this..... day of..... A.D. 18..., before me, the subscriber, a..... in and for said County, duly authorized to administer oaths, personally came..... aged..... years, and..... aged..... years, whom I know to be residents of the County and State aforesaid, and persons whom I certify to be respectable and entitled to credit, and who, being duly sworn, say that they were present and saw..... execute the foregoing affidavit by..... to the foregoing declaration, and making oath thereto in due form of law, and they further swear that they are acquainted with the said..... now present, and have every reason to believe from the appearance

of the applicant, that he is the identical person he represents himself to be; and further, that they, deponents, do reside in the County aforesaid.

WITNESS,.....

SWORN TO AND SUBSCRIBED before me, this }  
 .....day of....., A.D. 18 }  
 .....J. P.

STATE OF ..... }  
 COUNTY OF ..... } ss.

I HEREBY CERTIFY that....., Esq., before whom the foregoing Declarations and Power of Attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn, and that his signature thereto is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of.....Court, for the County aforesaid, this..... day of.....185

.....Clerk of.....

#### FORM OF APPLICATION FOR THE WIDOW OF A DECEASED OFFICER OR SOLDIER.

STATE OF..... }  
 COUNTY OF..... } ss.

On this.....day of....., A.D. 185., before me, the undersigned, a....., duly authorized by law to administer oaths within and for the County and State aforesaid, personally appeared....., aged.....years, a resident of....., in the county of....., and State of.....; who being duly sworn according to law, declares that she is the widow of....., deceased, who was a.....in the company.....commanded by Captain....., in the regiment....., commanded by....., in the war with.....

That her husband entered the service at....., about the.....day of....., A.D. 18.., for the term of....., and continued in actual service in said war, for the term of....., and was honorably discharged at....., on the.....day of....., A.D. 18..

She further states that she was married to the said....., in....., State of....., on the.....day of....., A.D. 18.., by one....., a.....; and that her name before her said marriage was.....; that her husband died at....., on the.....day of....., A.D. 18.., and that she is still his widow.

And she further states that there is.....public record of her marriage—and that there is.....private record of her marriage..... That she cannot file herewith his certificate of discharge for the reason that..... In addition to the above described actual service she claims for.....miles from....., at which he was enlisted, to....., where he was mustered into service, and for.....miles, from....., at which he was discharged, to....., the said place of his enrolment.

She makes this declaration for the purpose of obtaining the.....bounty land to which she may be entitled on account of said service and mileage, under the acts passed September 28, 1850. and 22d March, 1852. She also declares that she has not received a warrant for bounty land, under this or any other act of Congress, nor made any other application therefor..... She hereby appoints.....her true and lawful attorney, with power of substitution, to prosecute this her claim for land, to receive the certificate or warrant when issued, and to do all other acts necessary and proper in the premises.

WITNESS:.....

SWORN TO AND SUBSCRIBED before me, on the day and year first above men-

tioned, and I hereby certify that I know the said deponent, ..... and believe her to be as is above stated, and that she is of the age above stated ; and further, that I am not interested in this her claim as attorney or otherwise.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of....., A.D. 185., personally appeared before the subscriber, a Justice of the Peace, in and for the county aforesaid, duly authorized to administer oaths,..... a resident of said county, to me well known as a credible witness, and who, being by me first duly sworn, doth on his oath state that he is acquainted with Mrs....., the above named applicant for bounty land—that he has known her for.....years last past, that he has examined her family record—that he believes the same to be genuine—that it is contained in a book purporting to be the “.....” and printed in the year.....; and that the said record, as far as relates to the marriage of the said applicant and the soldier above named, and of his death, is as follows, which is an exact copy of the same:.....; and that the said deponent is not interested in the claim.

SUBSCRIBED AND SWORN to, the day and year }  
first above written, before me, and I certify }  
that I am in no manner interested. }  
....., J.P.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of....., A.D. 185., personally appeared before me, the undersigned, a Justice of the Peace in and for said county,.....and....., who are to me well known, and who are credible witnesses, and who, being by me duly sworn, depose and say, that they are each well acquainted with Mrs....., the above applicant for a bounty land—that they have known her for.....years last past. That they were acquainted with....., her late husband, having known him for.....years previous to his death ; that they, the said.....and.....lived together as husband and wife, and were reputed so to be, that deponents never heard the fact of their marriage disputed or questioned. That the said.....died on the.....day of....., 18., and the said.....has been since that day, and still is reputed to be his widow, which deponents believe to be the fact. That she has never married since her said husband's death, and still is his widow. and that her said husband was the identical man mentioned as a soldier..... in her declaration above, and further, that they were present and saw.....execute the foregoing affidavit by.....to the foregoing declaration, and making oath thereto in due form of law, and further, that they, deponents, do reside in the county aforesaid.

WITNESS :.....

SWORN TO AND SUBSCRIBED before me, this }  
.....day of....., A.D. 18... }  
....., J.P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esq., before whom the foregoing affidavits and power of attorney were made and acknowledged, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace, in and for the county aforesaid, duly commissioned and sworn, and that his signatures thereto are genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of.....Court, for the county aforesaid, this.....day of....., 185.., Clerk of.....

## BOUNTY LANDS.—MISCELLANEOUS.

## APPLICATION FOR A DUPLICATE WARRANT.

In all applications for the re-issue of Land Bounty Warrants, granted under the acts of 11th February, 1847, and 28th September, 1850, respectively, in lieu of the originals which may have been lost or destroyed, the following regulations, approved by the Department of the Interior, will be observed :

When a warrant has failed to reach the hands of the party entitled to receive it, and to whom it was sent, or has been lost after being received, the party should at once enter a caveat in the General Land Office to prevent the issuing of a patent to a fraudulent claimant, and should give public notice of the facts in the case, at least once a week for six successive weeks, in some newspaper of general circulation at or nearest the place to which the warrant was directed, or where the loss occurred. In such publication, (a printed copy of which should be furnished, with the affidavit of the publisher as to its due appearance,) the intention shall also be expressed to apply to the Commissioner of Pensions for a duplicate of such warrant, which of course, should be minutely described, in order to guard against the improper use of the one first issued.

The identity of the applicant must be satisfactorily established, and the facts upon which the application for the reissue is based must be fully and clearly set forth under oath; the warrantee stating in his affidavit, (if such be the fact,) that he has never sold, assigned, or voluntarily parted with his right to the warrant in question.

If the warrant has been lost after being assigned, execution of the lost assignment must be satisfactorily established in the usual manner before a court of record.

In cases where the claim for a duplicate is founded upon the non-reception of the original, the agent, if there be one, is required to unite with the warrantee in the application for renewal.

It is requisite that the credibility of each and every affiant be duly certified by the magistrate administering the oath, whose official character and signature must be verified by the proper officer, under his seal of office.

FORM OF CAVEAT,

TO BE FILED IN THE GENERAL LAND OFFICE.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... in the year one thousand eight hundred and fifty..... personally appeared before me, the undersigned, a Justice of the Peace in and for the County and State aforesaid....., to me well known, and who being by me duly sworn according to law, declares that he is the identical....., who was a..... in the Company..... commanded by Captain..... in the Regiment of..... commanded by Colonel..... that he enlisted at..... on the..... day of....., 18...., for the term of..... and was discharged at....., on the..... day of..... 18....; by reason of..... That a Bounty Land warrant for..... acres....., under act of..... was issued by the commissioner of pensions to him, on account of said service, which warrant was numbered..... As he has been informed, and believes the said warrant has been lost in the manner following viz: .....

That the said warrant has never been by him sold, assigned nor has he voluntarily parted with his right to the warrant in question. He therefore asks that a caveat may be entered in the General Land Office in order to prevent the issue of a patent thereon to any fraudulent claimant, and hereby appoints..... as his attorney, authorizing him to attend to his claim for a duplicate warrant, and to do such other acts as may be necessary and proper in the premises.

SWORN TO AND SUBSCRIBED before me, this.... }  
day of....., A.D., 18.. }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of....., in the year one thousand eight hundred and fifty..... personally appeared before me, the subscriber, a Justice of the Peace in and for said County and State....., and....., to me well known, and who being duly sworn according to law, declare that..... the person who subscribed and took the preceding affidavit, is to their knowledge the identical person described in the same, and whose deposition is worthy of full credit.

SWORN AND SUBSCRIBED before me, this.... }  
day of..... 18... }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY that..... Esquire, before whom the foregoing affidavits were made, and who has thereunto subscribed his name, was, at the same time of so doing, a Justice of the Peace, in and for the County aforesaid, duly commissioned and sworn.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office as Clerk of the..... Court of said County, this..... day of....., 18....

APPLICATION FOR A DUPLICATE LAND WARRANT.

TO BE FILED IN THE PENSION OFFICE.

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... in the year one thousand eight hundred and fifty..... personally appeared before me, the undersigned, a Justice of the

Peace in and for the county and state aforesaid ..... to me well known, and who being by me duly sworn according to law, declares that he is the identical ..... who was a ..... in the Company commanded by Captain ..... in the regiment of ..... commanded by Colonel ..... that he enlisted at ..... on the ..... day of ..... 18...., for the term of ..... and was discharged at ..... on the ..... day of ..... 18....; by reason of .....

That upon his application for a land warrant on account of said service, warrant No. .... for ..... acres was issued, which said warrant has been lost in the manner following; (never having been sold or assigned, nor has he ever voluntarily parted with his right to the said warrant.) viz : ..... That he has caused a caveat to be entered in the General Land Office against the issuance of a patent to any fraudulent claimant, and has also, caused notice to be given for six weeks, of his intention to apply for a duplicate of said warrant, in a newspaper of general circulation at or nearest the place where such loss occurred as will appear by proof herewith. That he respectfully asks the Commissioner of Pensions to cause a duplicate of said warrant to be issued and sent to ..... his attorney, whom he appoints for that purpose.

SUBSCRIBED AND SWORN before me, }  
this ..... day of ..... 18.... }  
..... J. P.

STATE OF ..... } ss.  
COUNTY OF ..... }

On this ..... day of ..... in the year one thousand eight hundred and fifty ..... personally appeared before me, the subscriber, a Justice of the Peace in and for said county and state ..... and ..... to me well known, and who being duly sworn according to law, declare that ..... the person who subscribed and took the preceding affidavit, is to their knowledge, the identical person described in the same, and whose deposition is worthy of full credit.

SWORN AND SUBSCRIBED before me, }  
this ..... day of ..... 18.... }  
..... J. P.

Notice is hereby given that after publication of this notice for six weeks, application will be made to the Commissioner of Pensions for the issue of a duplicate of Warrant No. .... act of ..... issued to ..... late a ..... in Captain ..... company, in Colonel ..... regiment, in the war with ..... the same having been lost, and a caveat against its location entered in the General Land Office, dated ..... 18....

Atty. for .....

STATE OF ..... } ss.  
COUNTY OF ..... }

On this ..... day of ..... A.D. 18.... personally appeared before me the subscriber, a Justice of the Peace, in and for said county ..... who being duly sworn deposes and says that he is the publisher of ..... a newspaper printed in said county. and that a notice of which the annexed printed notice is a copy, has been published in said newspaper for the period of six weeks, once in each week, since the ..... day of ..... 18.... the date of its first publication.

SWORN TO AND SUBSCRIBED before me, }  
this ..... day of ..... 18.... }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY that..... Esquire, before whom the foregoing affidavits were made, and who has thereunto subscribed his name, was at the time of so doing a Justice of the Peace in and for the county aforesaid, duly commissioned and sworn,

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, as clerk of the..... Court of said County, this ..... day of ....., 18....

## ASSIGNMENT

OF BOUNTY LAND WARRANTS ISSUED UNDER THE VARIOUS ACTS OF CONGRESS FOR MILITARY SERVICE; AND LOCATION OF THOSE ISSUED UNDER ACTS OF 1850 AND 1852.

Warrants issued under Act of 11th February, 1847 (Mexican war) were assignable under instructions issued by the Commissioner of the General Land office.

Warrants under act of September 28th, 1850, were not assignable, until the passage of the Act of 22d March, 1852, which provides "That all warrants for Military Bounty Land which have been or may hereafter be issued under *any* law of the United States; and all valid locations of the same are hereby declared assignable, by deed or instrument of writing made and executed after the taking effect of this act *according* to such form, and pursuant to such regulations as may be prescribed by the Commissioner of the General Land office."

The following forms (prescribed by the Commissioner) apply to assignments of Bounty Land Warrants issued under *any* Act of Congress. It will be observed as essential that the assignment be made upon the back of the Warrant.

### FORM FOR THE ASSIGNMENT OF THE WARRANT.

For value received, I, ....., to whom the within warrant No..... was issued, do hereby sell and assign unto ....., of..... and to his heirs and assigns for ever, the said warrant, and authorize him to locate the same, and receive a patent therefor.

WITNESS MY HAND AND SEAL, this ..... day }  
of..... 185 . }

Attest:..... (two witnesses necessary.) [SEAL.]



FORM OF ACKNOWLEDGMENT WHERE THE VENDOR IS KNOWN TO  
THE OFFICER TAKING THE ACKNOWLEDGMENT.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of.....in the year....., before me, personally came (*here insert the name of the Warrantee,*) to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify, that the said (*here insert the name of Warrantee*) is the identical person to whom the within warrant issued, and who executed the foregoing assignment thereof.  
(*Officer's signature.*).....

FORM OF ACKNOWLEDGMENT WHERE THE VENDOR IS NOT KNOWN  
TO THE OFFICER, AND HIS IDENTITY HAS TO BE PROVED.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of.....in the year....., before me, personally came (*here insert the name of the Warrantee*) and (*here insert the name and residence of a witness,*) and the said (*here insert the name of the witness*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said, that he well knows the said (*here insert the name of the Warrantee,*) and that he is the same person to whom the within Warrant issued, and who executed the foregoing assignment, and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the Warrantee,*) thereupon acknowledged the said assignment to be his act and deed.  
(*Officer's signature.*).....

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esquire, before whom the foregoing acknowledgement was made, and who has thereunto subscribed his name, was at the time of such acknowledgment, a Justice of the Peace in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of.....County Court, (a Court of Record), this.....day of....., A.D. 185....., Clerk.

FORM FOR THE ASSIGNMENT OF THE LOCATION.

For value received, I, A.B., to whom the within certificate of location was issued, do hereby sell and assign unto C.D., and to his heirs and assigns for ever, the said certificate of location, and the warrant and land therein described, and authorize him to receive the patent therefor.

WITNESS my hand and seal this.....day of, ..... 18....

WITNESS : .....

WITNESS : ..... [SEAL.]

FORM OF ACKNOWLEDGMENT WHERE THE VENDOR IS PERSONALLY KNOWN TO THE OFFICER.

STATE OF..... }  
COUNTY OF..... } ss.

On this.....day of.....in the year....., before me personally came (*here insert the name of the person to whom the certificate of location issued*) to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify, that the said (*here insert the name of the person to whom the certificate of location issued*) is the identical person to whom the within certificate of location issued, and who executed the foregoing assignment thereof.  
.....

**FORM OF ACKNOWLEDGMENT WHERE THE VENDOR IS NOT PERSONALLY KNOWN TO THE OFFICER, AND WHERE HIS IDENTITY HAS TO BE PROVED.**

STATE OF..... }  
COUNTY OF..... } ss.

On this..... day of..... in the year..... before me, personally came (*here insert the name of the person to whom the certificate of location issued,*) and (*here insert the name and residence of a witness,*) and the said (*here insert the name of the witness*) being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said (*here insert the name of the person to whom the certificate of location issued,*) and that he is the same person to whom the within certificate of location issued, and who executed the foregoing assignment; and his testimony being satisfactory evidence to me of that fact, the said (*here insert the name of the person to whom the certificate of location issued*) thereupon acknowledged the said assignment to be his act and deed.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esquire, before whom the foregoing acknowledgment was made, and who has thereunto subscribed his name, was at the time of such acknowledgment, a Justice of the Peace in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affix the seal of..... County Court, (a Court of Record,) this..... day of....., A.D. 185.....  
..... Clerk.

**OF A POWER OF ATTORNEY TO SELL A WARRANT.**

KNOW ALL MEN BY THESE PRESENTS, that I, (*here insert the name of warrantee*) of the county of....., and State of..... do hereby constitute and appoint..... of..... my true and lawful attorney for me, and in my name, to sell and convey the within land warrant No..... for..... acres of land, which issued under the act of September, 1850; (*or March, 1852, as the case may be.*)

Signed in presence of }  
.....

This power of attorney should be acknowledged and authenticated in the same manner as the assignment of the warrant.

**REGULATIONS AND INSTRUCTIONS.**

Assignment No. 1 and acknowledgment must be endorsed upon the warrant, and No. 2 and acknowledgment upon the certificate of location; and must be attested by two witnesses, acknowledged before a Register or Receiver of a Land Office, a Judge of a Court of Record, a Justice of the Peace, or a Commissioner of Deeds resident in the State from which he derives his appointment; and in every instance where the acknowledgment is made before any officer other than the Register or Receiver of a Land office, it must be accompanied by a certificate, under seal of the proper authority,

of the official character of the person before whom the acknowledgment was made, and also of the genuineness of his signature.

All assignments of bounty land warrants issued under the act of September 28th, 1850, made before the date of this act, (March 22d, 1852,) are invalid and void.

The same section provides, "That any person entitled to pre-emption right to any land, shall be entitled to use any such land warrant in payment of the same, at the rate of \$1 25 per acre for the quantity of land therein specified."

By this provision, all persons entitled to pre-emption, whether on offered or unoffered lands, can use a military bounty land warrant in payment for the tract pre-empted, reckoning the said warrant at \$1 25 per acre for the quantity therein specified, whether the land so claimed is at the usual or enhanced minimum.

Should the area of the tract claimed exceed the amount called for in the warrant, the pre-emptor will have to pay for the excess in cash, but if it should fall short, he is not entitled to a refunding of the excess.

It is further provided by the same section, "that the warrants which have been, or may hereafter be, issued in pursuance of said laws, or of this act, may be located according to the legal subdivisions of the public lands, in one body, upon any lands of the United States subject to private entry at the time of such location, at the minimum price: *Provided, further*, That when said warrants shall be located on lands which are subject to entry at a greater minimum than \$1 25 per acre, the locator of said warrant shall pay to the United States, in cash, the difference between the value of such warrants at \$1 25 per acre, and the tract of land located on."

By these provisions, where the lands are subject to private entry at \$1 25 per acre, the holder of an eighty-acre warrant can take any two forty-acre lots, forming a compact body of eighty acres; and the holder of a warrant for one hundred and sixty acres, can take two eighty-acre, or four forty-acre tracts, forming a compact body of one hundred and sixty acres.

Where the minimum price of the lands, subject to private entry proposed to be located is more than \$1 25 per acre, the holder of the warrant can locate, in accordance with the instructions contained in the foregoing paragraph, the quantity specified in the warrant, by paying the difference in cash.

This act does not authorize the holder of an eighty-acre

warrant to locate therewith a forty-acre tract of land at \$2 50 per acre in full satisfaction thereof, but he must locate, by legal subdivisions, the compact body of eighty acres, as near as may be, and pay the difference in cash. So also of 160 acre warrants, except in pre-emption cases, as herein before stated.

Each warrant is to be distinctly and separately located, so that it follows that no *body of land* can be located by an assignee of various warrantees, with a *number of warrants*; nor can a pre-emptor, in any case, use more than one warrant in the location of the land pre-empted by him, and the excess if any, must be paid for by him in cash.

The 2d section of the act provides, "That the Registers and Receivers of the Land Offices shall hereafter be severally authorized to charge and receive for their services in locating all military bounty land warrants, issued since the 11th day of February, 1847, the same compensation or per centage to which they are entitled by law for sales of the public lands for cash, at the rate of \$1 25 per acre, the said compensation to be hereafter paid by the assignees or holders of such warrants."

The 3d section of the act provides, "That Registers and Receivers, whether in or out of office at the passage of this act, or their legal representatives in case of death, shall be entitled to receive from the Treasury of the United States, for services heretofore performed in locating military bounty land warrants, the same rate of compensation provided in the preceding section for services hereafter to be performed, after deducting the amount already received by such officers under the act entitled 'An act to require the holders of military land warrants to compensate the Land Officers of the United States for services in relation to the location of those warrants,' approved May 17th, 1848: *Provided*, That no Register or Receiver shall receive any compensation out of the Treasury for past services, who has charged and received illegal fees for the location of such warrants: *And provided, further*, That no Register or Receiver shall receive for his services during any year a greater compensation than the maximum now allowed by law."

Where parties may desire to avail themselves of the privilege of having their warrants located through the General Land Office, as provided for by the act of 28th September, 1850, they must take the necessary steps to pay to the Register and Receiver the fees to which they are entitled. The same course must be observed by persons remote from the District Land Offices in making applications by letter

to those officers. Without the payment of those fees the warrants cannot be located.

As many inquiries are made, relative to the rights of parties, where military warrants under acts of 1850 and 1852 have issued to persons who have died *before*, or *after* the *date of the warrant*, the following general principles governing in such cases are given :

1st. Where a soldier has died *before* the *date* of the warrant, it is a nullity, and should be surrendered to the Pension office with a view to the issue of a new one to the *widow*, if one exists, and if not, to the *minor children* of the soldier, in *whom alone exists the right to such warrant* in the respective instances cited.

2d. Where the soldier dies *after* the date of the warrant, and before its location or sale, the property therein descends to his *heirs at law*, *who alone have the right to locate or dispose of the same*, unless express provision is made in the will of said decedent, in which case it follows, of course, the special devise so made. Proof must be submitted of the demise of the warrantec, and the date when, and a certified copy of the will, making the devise in question either in specific terms, or by a devise of his *real estate* generally, which would of course include such warrant. Where no will has been made, in addition to proof of the demise and the period thereof, it should be shown, *who* are the heirs, and *only* heirs, and if any of them are *minors*, they must act through their *guardians*, whose appointment is to be proven ; and if such action is for the sale of the warrant, express authority to that effect must be shown to have been given by the proper probate court. Where the warrant is issued to minor children, or where persons shown to be heirs-at-law of a deceased warrantec or assignee, unite *personally* in an assignment, it must be shown that at the date thereof they had each attained the age of twenty-one years ; and where the said heirs, or any portion of them, are *femmes covert*, their husbands must unite in the assignment.

The proof herein referred to must be attached to the warrant, and should be such as has been taken before the probate court, or other legal tribunal having jurisdiction over the estates of deceased persons, and consist not of the mere certificate of the ministerial officer of such court of the facts referred to, *but of transcripts from the records of such court*, duly certified and under seal, which transcripts of themselves evidence such facts.

3d. Where the warrant has been assigned, and the last assignee dies without having located or disposed thereof, the

same rules apply in reference to its devise, or descent to his heirs-at-law.

4th. These warrants being regarded as *real estate*, they are to be treated as such by the respective courts having jurisdiction thereof, and hence such action as would be applicable to mere *chattel property*, under the law of the particular State in which the decedent had his domicil, will not be sufficient.

5th. Where the heirs are so scattered as to render it difficult or impracticable to obtain their individual assignments, then, on a decree of the proper court, in a proceeding similar to a petition for partition, the assignment may be made by the commissioner appointed to make sale, he to account to the heirs for the proceeds, or the right to locate the said warrant would vest immediately in the person in whose favor a decree might be made, on an approval of a sale effected under a preparatory decree; a certified transcript of the proceedings of the court, in either case, should be appended to the warrant.

6th. Where the assignment of a warrant is executed by the warrantee, or an assignee, or by any of the heirs of either, in a foreign country, the attestation of the American consul in such foreign country should be obtained, as to the official character and genuineness of the signature of the persons before whom the acknowledgment of the assignment was taken; or, if the official character, etc., of such foreign functionary is attested by a consular agent of such foreign government residing in this country, his official character must be certified to by the official representative of such foreign government in the United States, inasmuch as the State Department here has no official knowledge of the handwriting or seals of *consuls* of foreign powers. Where such assignments are executed in a foreign language, duly authenticated translations thereof must be also furnished.

7th. Widows, as such, of deceased warrantees, have *no* right to locate or assign said warrants:—neither have administrators, except where the statute law of a State gives them express authority to dispose of the *realty* of their intestates, and then it should be evidenced by a proper certificate to that effect on the face of the warrant.

8th. A warrant issued to minor heirs, or assigned bay warrantee to three or more persons, cannot be located if assigned by one portion of the parties to another portion, or to other persons, so as to invest any *one* of the parties with a greater interest than any other. In other words, *each* owner of a warrant, at the time of its location, must have an *equal* share or interest therein.

9th. Warrants issued to a "guardian of" minor heirs should be located in the name or names of the minors themselves, instead of in those of the guardians. The issue of the warrant in that form was an inadvertence, and the words "guardian of" will be erased by the Pension office, after its location and return to this office.

10th. Where an assignment has been apparently agreed upon, as evinced by a partial execution thereof, and the assignor dies before it is fully completed, by the attesting assignatures of two witnesses, and acknowledgment before a proper officer, the assignment must be made *de novo* by the heirs-at-law, accompanied by satisfactory explanatory evidence as to the incomplete assignment.

11th. Parties in interest are not to be recognized as legal attesting witnesses to an assignment, and the legibility of the names of parties should in all cases be required.

#### AS TO LOCATIONS.

There are three modes by which these locations may be made:

1st. By the warrantee, or other legal owner of the warrant, in person.

2d. By the warrantee, or other legal owner of the warrant, through the agency of this office.

3rd. By an agent or attorney, of either of said parties.

If the first or second mode is adopted, the application must be made in writing, specifying the tract, land district, or section of country in which the location is desired, and be accompanied by an affidavit according to form No. 1, hereto appended.

Where the third mode is adopted, a power of attorney must be produced, executed by the owner of the warrant in the presence of a witness, according to form No. 2, which power of attorney must be acknowledged, or proved, as the case may be, before some officer authorized to take the acknowledgment of deeds, according to form No. 3 or 4.

The following fees are chargeable by the land offices, and the several amounts must be *paid at the time of location*.

For a 40 acre warrant, fifty cents each to the register and receiver—total,	\$1
For a 80       "       one dollar       "       "       "	2
For a 160     "       two dollars     "       "       "	4

*In all cases* the patents will be transmitted to the land office where the location is made, unless special directions to the contrary be given, in which last case the duplicate certificate of location must be previously transmitted to this office

AS TO ASSIGNMENTS AND POWERS OF ATTORNEY.

Assignment and the proper acknowledgment must be endorsed upon the warrant, and the proper acknowledgment upon the certificate of location, and must be attested by two witnesses, acknowledged before a Register or Receiver of a Land Office, a Judge of a Court of Record, a Clerk thereof when authorized to take acknowledgments, a Justice of the Peace, Notary Public, or a Commissioner of Deeds, resident in the State from which he derives his appointment; and in every instance where the acknowledgment is made before either of the officers above specified, except the Register or Receiver of a Land Office, or the Clerk of a Court of Record, it must be accompanied by a certificate, under seal of the proper authority, of the official character of the person before whom the acknowledgment was made, and also of the genuineness of his signature.

Where warrants are disposed of under powers of attorney, the power and assignment must *invariably* be endorsed on the warrant, or they will not be recognized.

The acknowledgment of this power of attorney must be taken and certified in the same manner as the acknowledgments of the sales of the warrant or certificate of location hereinbefore prescribed, and must also be *endorsed on the warrant*.

FORM No. 1.

STATE OF..... }  
COUNTY OF..... } ss.

BEFORE ME, ....., (a Justice of the Peace or other officer authorized to take affidavits,) personally appeared ....., who being duly sworn, deposes and says, that he is the identical....., to whom warrant No..... for..... acres under the act of September, 1850, (or March, 1852, as the case may be.) was issued on the..... day of....., 185., and who now applies to locate the same.

SWORN AND SUBSCRIBED before me this }  
..... day of....., 185.. }

FORM No. 2.

KNOW ALL MEN BY THESE PRESENTS, that I, ....., of the county of...., and State of....., do hereby constitute and appoint....., of..... my true and lawful attorney, for me and in my name, to locate land warrant No..... for..... acres of land, which issued under the act of September, 1850, (or March, 1852, as the case may be.)

(Power of Substitution may be inserted if desired.)

SIGNED IN PRESENCE OF }  
..... }  
..... }



## FORM No. 3.

STATE OF..... }  
 COUNTY OF..... } ss.

On this..... day of....., in the year 18.., personally appeared.....  
 ....., and acknowledged the within power of attorney to be his act and deed,  
 and I certify that I well know the said....., and that he is the same  
 person who is described in the within power, and who executed the same.  
 .....

## FORM No. 4.

STATE OF..... }  
 COUNTY OF..... } ss.

I HEREBY CERTIFY, that on this..... day of....., in the year 18.., per-  
 sonally came before me, ..... and....., and the said.....  
 .... being well known to me, was duly sworn by me, and on his oath declared  
 and said that he well knew the said....., and that he was the same  
 person described in, and who executed the within power of attorney, and  
 his testimony was to me satisfactory evidence of that fact, and the said.....  
 .... thereupon acknowledged the said power to be his act and deed.  
 .....

The location of the bounty land, under the act of 28th September, 1850, must  
 be on land that has been actually offered at public sale before the 3d March, 1851

DEPARTMENT OF THE INTERIOR, *March 17, 1851.*

SIR: In reply to your letter of the 13th instant, I have to  
 state that, under an act of Congress, approved 3d March,  
 1851, no bounty land warrant issued under the act of 28th  
 September, 1850, or by virtue of any prior law granting  
 bounty land, can be located on any land which had not prior  
 to the passage of the act of the 3d of March last, been brought  
 into market, and which was not then subject to private  
 entry; so that the land applicable to the satisfaction of all  
 warrants, not yet located, must have been surveyed, pro-  
 claimed for sale by the President, and actually offered at  
 public sale prior to 2d March, 1851.

T. H. SPINDLE.

A. H. H. STUART.

Military land warrants cannot be located on pre-emption lands, nor on lands  
 actually settled and cultivated, without the consent of the pre-emptioner, and  
 the settler, satisfactorily proven.

DEPARTMENT OF THE INTERIOR, *March 19, 1851.*

SIR: In reply to your letter of the 27th ultimo, I have to  
 inform you that there is no law granting bounty land to the  
 volunteers, engaged in removing the Indians from the west  
 part of North Carolina in the year 1835 or 1839. Military  
 land warrants cannot be located on pre-emption claims with-  
 out the consent of the pre-emptioner, nor upon lands upon  
 which there shall be an actual settlement and cultivation,  
 except with the consent of such settler, to be satisfactorily  
 proven to the proper land officer.

H. T. JOHNSON, Esq.

A. H. H. STUART.

## SURRENDER OF BOUNTY LANDS.

AN ACT authorizing certain soldiers of the late war with Great Britain to surrender the Bounty Lands drawn by them, and to locate others in lieu thereof.

APPROVED, JANUARY 7. 1853.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall and may be lawful for any soldier in the late war with Great Britain, to whom bounty land has been allotted and patented in any State of this Union, by virtue of the laws of the United States passed prior to the year 1850—which was and is unfit for cultivation, to surrender said patent, and to receive in lieu thereof the same quantity of any of the public land subject to private entry at the minimum price as he may select: *Provided,* That before receiving such new land, it shall be proven to the satisfaction of the Commissioner of the General Land Office, that the land so allotted and patented to said soldier is unfit for cultivation, and that said soldier has never disposed of his interest in said land by any sale of his own, and that the same has not been taken or disposed of for his debts due to any individual, and that he shall release all his interest in the same to the United States in such way as said Commissioner shall prescribe, and such surrender and location shall be made within five years from the passage of this act.

## OFFICIAL INSTRUCTIONS.

This law applies to all those tracts of land (provided they are unfit for cultivation) situated in the States of Illinois, Missouri, and Arkansas, which were *allotted* and patented to soldiers (or their heirs) for services performed in the late war with Great Britain, and excludes heirs and assignees—it being intended for the benefit of the *soldier* or *patentees only*, if living.

To enable those persons to whom lands were allotted and patented for services in the late war with Great Britain, to avail themselves of the benefit of the above recited Act of Congress, it will be necessary that the following requisitions should be complied with, viz. :

1. It must be shown to the satisfaction of the Register and Receiver of the Land Office, that the land patented is unfit for cultivation.

2. That the soldier or patentee claiming the benefits of the Act, has not divested himself of his interest in the land, that it has not been disposed of for his debts due to any individual. On each of these points, satisfactory proof must

be adduced to the Land Officers for the district wherein the land allotted and patented to the soldier is situate.

The proof of the lands being unfit for cultivation, should be the affidavit of the soldier himself, and the testimony of two disinterested and responsible persons, who shall have actually examined the whole of the land; the affidavit to be taken by a justice of the peace, or other officer authorized to administer oaths.

The proof that the party has not divested himself of his interest in the land by deed or otherwise, *as aforesaid*, must be the certificate of the proper officer of the proper county, that there is no deed or other instrument of record going to show that fact, and the affidavit of the patentee to the same effect.

The patent must be surrendered with a deed of relinquishment, certified and duly recorded in the proper county at the date of the before mentioned certificate, and both the patent and deed are to be deposited with the Land Officers, and by them forwarded to this office. The patent to bear an endorsement by the Register, referring to the deed of relinquishment and its date.

Upon the receipt of the papers, the case will be examined, and if the above requisitions have been fully complied with, a special certificate will be issued by this office, authorizing the party to locate 160 acres of any Public Land subject to private entry.

JOHN WILSON, *Commissioner*.

GENERAL LAND OFFICE, *January 10, 1853.*

### VIRGINIA LAND WARRANTS.

AN ACT making further provisions for the satisfaction of Virginia land warrants.

APPROVED AUGUST 31, 1852.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unsatisfied outstanding military land warrants or parts of warrants, issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Commonwealth of Virginia, for military services performed by the officers and soldiers, seamen or marines, of the Virginia State and continental lines, in the army or navy of the Revolution, may be surrendered to the Secretary of the Interior, who, upon being satisfied by a revision of the proofs, or by additional testimony, that any warrant thus surrendered was fairly and justly issued, in pursuance of the laws of said Commonwealth, for military services so rendered, shall issue land scrip in favor of the present proprietors of any*

warrant thus surrendered, for the whole or any portion thereof yet unsatisfied, at the rate of one dollar and twenty-five cents for each acre mentioned in the warrant thus surrendered, and which remains unsatisfied, which scrip shall be receivable in payment for any lands owned by the United States subject to sale at private entry; and said scrip shall moreover be assignable by endorsement, attested by two witnesses. In issuing such scrip, the said Secretary is authorized, when there are more persons than one interested in the same warrant, to issue to each person scrip for his or her portion of the warrant; and where infants or feme-coverts may be entitled to any scrip, the guardian of the infant, and the husband of the feme-covert may receive and sell or locate the same: *Provided*, That no less than a legal subdivision shall be entered and paid for by the scrip issued in virtue of this act.

SEC. 2. *And be it further enacted*, That this act shall be taken as a full and final adjustment of all bounty land claims to the officers and soldiers, seamen and marines, of the State of Virginia, for services in the war of the Revolution: *Provided*, That the State of Virginia shall, by a proper act of the Legislature thereof, relinquish all claim to the lands in the Virginia military land district in the State of Ohio.

SEC. 3. *And be it further enacted*, That, in settling the claims of the State of Ohio, under the acts of March second, eighteen hundred and twenty-seven, and May twenty-fourth, eighteen hundred and twenty-eight, granting lands to said State for canal purposes, the same principles shall be acted upon as have been applied under the provisions of the act of May the ninth, eighteen hundred and forty-eight, entitled "An act in addition to an act therein mentioned," for the settlement of the claims of the State of Indiana accruing under the said act of March the second, eighteen hundred and twenty-seven.

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## RULES AND REGULATIONS

FOR ISSUING LAND SCRIP UNDER THE ACT ENTITLED "AN ACT MAKING FURTHER PROVISIONS FOR THE SATISFACTION OF VIRGINIA LAND WARRANTS," APPROVED AUGUST 31, 1852.

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GENERAL LAND OFFICE, *December 20th*, 1852.

1. The act of 31st August, 1852, above mentioned, authorizes the Secretary of the Interior to "issue land scrip in favor of the present proprietors of any" "unsatisfied outstanding military land warrants, or parts of warrants issued

or allowed prior to the 1st day of March, 1852, by the proper authorities of the Commonwealth of Virginia;" and consequently embraces the ten per centum deducted from the warrants filed under the act of March 3d, 1835; the warrants or parts of warrants located in Ohio, which conflict with previous valid locations; and also those located in Kentucky, on which that State refused to issue patents.

2. The Secretary of the Interior having charged this office with the execution of this law, it is required that all warrants or parts of warrants embraced thereby shall be filed in this office.

The cases will be taken up and examined in the order in which they have been or may be filed in this office; and where the evidence is satisfactory, scrip will be issued; where it is deficient, in whole or in part, the parties will be advised, and the case suspended till the deficiency is supplied; or, if it is ascertained that it was not fairly and justly issued, it will be rejected.

3. All warrants issued for services in the State or Continental line, or State navy, prior to June 1st, 1792, when the State of Kentucky was admitted into the Union, should be accompanied by a certificate under seal from the Register of the Kentucky Land Office, stating that such warrants have not been patented in that State.

Continental line warrants issued since that period, and prior to January 1st, 1852, should be accompanied by a certificate from the surveyor of the Virginia Military District in Ohio, stating that no location or survey has been made of such warrants; or, if a location and survey, or either, has been made, when, the amount, in whose favor, etc.

4. In all cases where a warrant has been lost, mislaid, or destroyed, the present proprietor must file a duplicate copy thereof, with a certificate from the Register, that the original has not been surrendered in exchange for any other warrant or warrants. After the warrant has been filed, with proofs showing the loss of the original, the present proprietor must give three months' public notice in a newspaper published near the domicile of the party in interest, and another in the city of Washington, describing the warrants, service rendered, amount, date, and number, stating the loss of the original, and the intention of applying to this office for scrip for the same. The warrants will remain *three months* in this office after the expiration of such notice, and, if not contested at that time, scrip will be issued on them.

5. Where warrants, having been partly satisfied by patent from the State of Kentucky, remain on file in the office of

the Register of the Land Office of that State, and therefore cannot be produced, certified copies of them from the Register of the Land Office at Richmond must be produced, and be accompanied by a certificate from the Register at Frankfort, Kentucky, describing the warrant, survey, etc.

6. In view of the provisions of the act of Congress, approved July 29, 1846, all Powers of Attorney executed prior to the passage of this act, which authorizes the sale of scrip, will not be recognized; and all assignments of warrants made since the passage of this law, (August 31, 1852,) must be in the presence of two witnesses, acknowledged before a Justice of the Peace, who must certify to the identity of the assignor, and whose official character must be certified to, under seal, by the Clerk of the Court.

7. The scrip will be issued in pieces or certificates of eighty acres, or one hundred dollars each, except for fractions to which claimants may be entitled after deducting the eighty-acre certificates.

"When there are more persons than one interested in the same warrant," scrip will issue to each person "for his or her proportion of the warrant," if desired.

8. When scrip is claimed, located, or sold by the "guardian of an infant," or "the husband of a feme covert," the evidence of their being such guardian or husband, fully authenticated, must be produced.

9. This scrip is "assignable by endorsement, attested by two witnesses," in the following manner, upon the back of the certificate:

For value received, (*I, or we, as the case may be,*) the present proprietor of the within certificate of scrip, do hereby sell and assign the same to ..... of....., and his heirs and assigns forever.

Witness my hand and seal, this the..... day of....., 18....

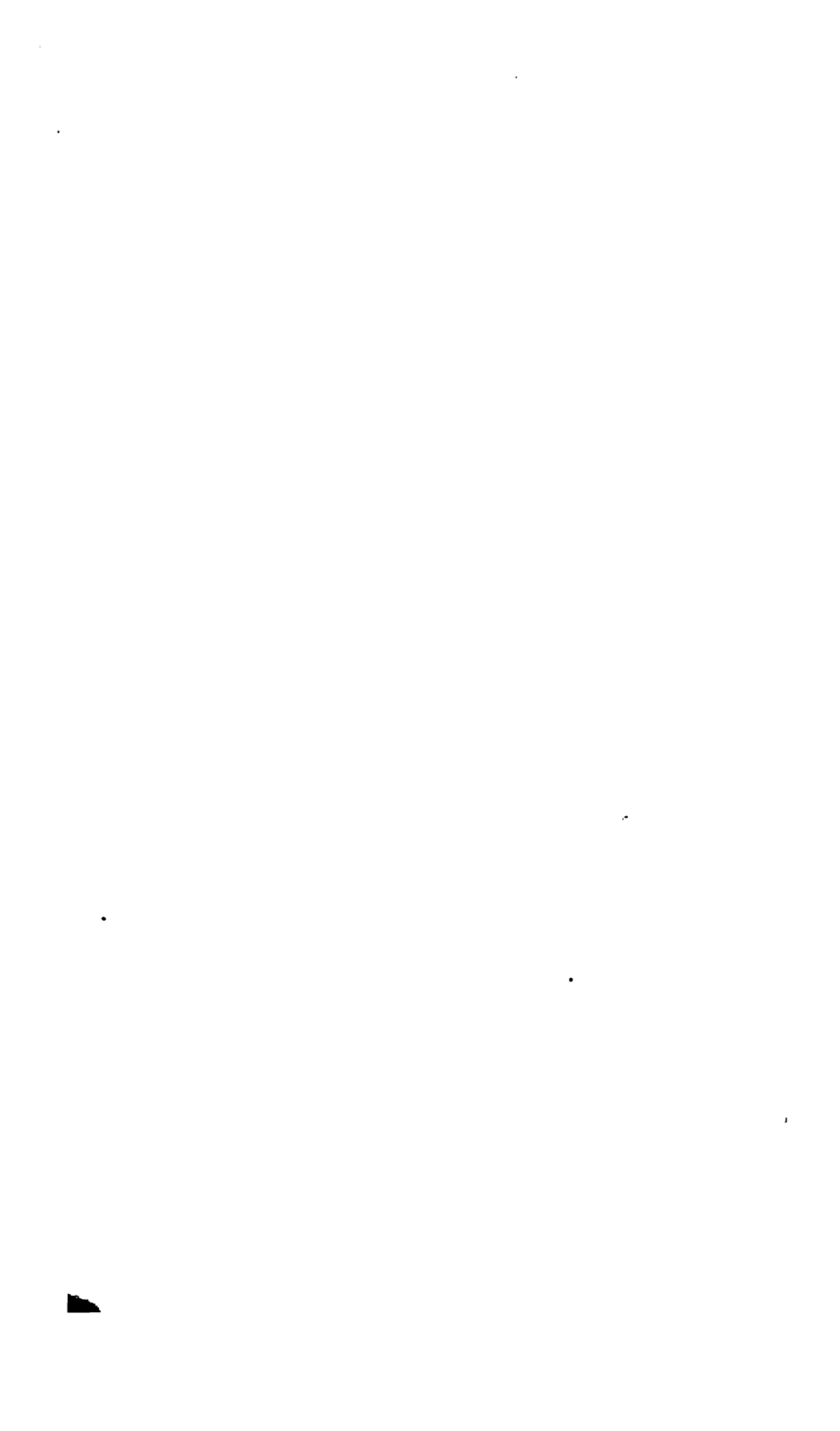
Attest : ..... [SEAL.]

10. This scrip is "receivable in payment of any lands owned by the United States, subject to sale at private entry," except such lands as are claimed by pre-emption, or are settled upon and cultivated, and can be applied at the rate of \$1.25 per acre, in the same manner as money, in all cases where the tract applied for contains the area specified in the scrip, or more; where it contains less, the excess of the scrip cannot be refunded in money, but may be denoted in the relinquishment as applicable to any other tract.

By order of the Secretary of the Interior.

Approved : JOHN WILSON, *Commissioner*.

ALEX. H. STUART.



PART III.

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PAY OF THE OFFICERS, ETC.,  
OF THE  
ARMY, NAVY, AND MARINE CORPS OF THE  
UNITED STATES,  
IN THE  
WAR OF THE REVOLUTION, AND SUBSEQUENTLY.





## PAY OF THE REVOLUTIONARY ARMY.

STATEMENT showing the various Military grades created by Congress for service in the Revolutionary War; the pay allowed, and dates of increase and decrease of the pay; together with the pay of each grade at the close of the war; carefully compiled from the Journals of Congress.

GRADE.	CREATED.	PAY PER MONTH.	INCREASE OR DECREASE OF PAY.	PAY PER MONTH.	AMOUNT AT CLOSE OF WAR.
Major-general .....	June 16, 1776	166 00			166 00
Aide-de-camp .....	" " "	33 00			50 00
" to commander-in-chief .....	April 26, 1776	40 00	June 5, 1776	pay of col.	50 00
" to major or brig.-gen. ....			June 28, 1782	pay of maj.	50 00
Artificers, "3 yrs." or "for war" .....	Feb. 11, 1778	20 00			
" quarter-master .....	" " "	pay of rgt. qt. mr.			
" officers .....	" " "	pay of art. officers			
" commanding officer .....	" " "	pay of lt. colonel			
" director .....	Mar. 29, 1781	40 00			40 00
" sub-director .....	" " "	26½			28 66
Adjutant-general .....	June 16, 1776	125 00			125 00
" deputy adjt.-gen. ....	July 29, 1776	50 00			75 00
" regimental .....	" " "	18 33½	Sept. 19, 1776	pay of cap.	
			Oct. 7, 1776	40 00	
Assistant to .....	May 17, 1779	pay of colonel			50 00
Brigadier-general .....	June 16, 1776	125 00			125 00
Barrack master general .....	May 14, 1777	75 00	Jan. 20, 1780	abolished	
Bakers, director of .....	Feb. 27, 1778	50 00			
" sub-director .....	" " "	40 00			
" foreman .....	" " "	30 00			
" baker .....	" " "	24 00			
Brigade major .....	July 29, 1776	33 00	April 11, 1777	50 00	50 00
			May 27, 1778	capt. & *24	50 00
Bombardier .....	" " "	7 00	" " "	9 00	
Chaplain .....	" " "	20 00	July 6, 1776	33 33½	
			April 11, 1777	40 00	
" of brigade .....	May 27, 1777	pay of colonel			50 00
" of hospital .....	Sept. 18, 1777	60 00			
Clerk in issuing store, first .....	May 24, 1777	4s 8d per day			
" " others .....		3s 4d " "			
" to surgeon-general .....	April 8, 1777	\$2 00 " "			
" assistant do. to do. ....	" " "	0 66½ " "			
" " to paymasters .....	" " "	2 00 per day			
" assistant do. to do. ....	" " "	0 66½ " "			
" to comm'y. general .....	June 16, 1777	35 " mo.	May 11, 1779	50 00	
" dep. do. do. ....	" " "	35 " mo.		50 00	
" com'y. of mil. stores .....	Feb. 11, 1778	40			
" field commissary .....	Feb. 18, 1779	40			
" clothier general .....	Apr. 15, 1779	same as army			
" of the scales .....	May 11, 1779	35 [aud'a. clerk			
" adjt. general .....	May 17, 1779	pay of captain			40 00
† COMMISSARY GENERALS:					
" of stores & provisions .....	June 16, 1776	80 00		[year	
" of purchases .....	" " "	\$6 00 per day	Jan. 1, 1780	4,000 per	
" of musters .....	" " "	40 00	Aug. 7, 1777	pay of col.	
" of artillery .....	July 29, 1776	30 00			[a.
" of stores .....	Feb. 11, 1778	100 00			1000 p.
" of prisoners .....	June 5, 1777	pay of colonel			75 00
" of issues .....	June 16, 1777	150 00			
" of hides .....	June 20, 1777	80 00			

† Purchasing commissaries allowed commissions instead of salaries, by Resolution of March 13, 1778.

\* In addition to pay in the line.

## PAY OF THE REVOLUTIONARY ARMY.

GRADE.	CREATED.	PAY PER MONTH.	INCREASE OR DECREASE OF PAY.	PAY PER MONTH.	PAY AT CLOSE OF WAR.
† DEPUTY COMMISSARY GENERAL.					
“ of stores & provisions	July 29, 1776	60 00			
“ of purchases	June 16, 1777	\$5 00 per day	Nov. 30, 1780	125 00	
“ of musters	Aug. 7, 1777	100 00			
“ of artillery, east depar.	Mar. 14, 1777	33 33½			
“ of stores	Feb. 11, 1778	60 00			60 00
“ of prisoners	June 5, 1777	pay of major			
† ASSISTANT COMMISSARY GENERAL:					
“ of purchases	June 16, 1777	\$4 00 per day			
“ “ at hq. qrs.	Apr. 14, 1778	5 00 “			
“ of hides	July 23, 1779	140 00			
COMMISSARIES:					
“ of clothing	Oct. 16, 1776	pay of Major			
“ to surgeon	Apr. 8, 1777	\$3 00 per day			
“ field commissary	Jan. 12, 1781	90 00			50 00
DEPUTY COMMISSARIES:					
“ of musters	Aug. 7, 1777	60 00			
“ of stores, (at N. Y.)	Oct. 9, 1776	30 00			
“ of issues	June 16, 1777	75 00			
“ of forage	May 11, 1779	200 00	July 15, 1780	40 00	
“ field commissary	Jan. 12, 1781	70 00			40 00
ASSISTANT COMMISSARIES:					
“ of purchases	Nov. 30, 1780	75 00			
“ of stores	Feb. 11, 1778	50 00			
“ of issues	June 16, 1777	40 00			
“ of forage	May 11, 1779	140 00			
Superintendent of live stock	Nov. 30, 1780	50 00			
“ deputy, do.	June 16, 1777	27 00			
Inspector of cattle	Jan. 17, 1780	4 00 per day.			
Clothier general	April 16, 1779	250 00			450 00
“ assistant do.	Aug. 29, 1777	50 00			
Conductor of artillery	Feb. 18, 1779	40 00			
Asst. conductor of military stores	July 6, 1776	pay of Lieut.			
Conductor of military stores	Feb. 11, 1778	40 00	Jan. 12, 1782	45 00	30 00
Express rider		40 00			
Forage master	May 14, 1777	40 00	May 11, 1779	30 00	
			July 15, 1780	*10 00	
HOSPITAL DEPARTMENT:					
Director-gen. & ch. physician	July 27, 1776	4 00 per day.			102 00
Deputy do. do.	April 8, 1777	5 00 “			100 00
Assistant do. do.	Feb. 6, 1778	4 00 “			
Surgeon	July 27, 1776	1 33½			90 00
Surgeon's mate	“ “	0 66½	Sept. 30, 1780	50 00	
			Dec. 3, 1782	42 00	
Apothecary		1 33½			92 00
Assistant do.	Sept. 30, 1780	75 00			50 00
Assistant purveyor	“ “	75 00			
Storekeeper	July 27, 1776	4 00			
Nurse		2 00			
Commissary	Feby. 6, 1778	4 00 per day.			
Ward master	“ “	1 00	Sept. 30, 1780	25 00	
“ “			Dec. 3, 1782	21 00	31 00
Steward	Sept. 30, 1780	35 00	“ “	31 00	43 00
INSPECTOR-GENERAL	Feb. 18, 1779	250 00			300 00
Assistant do. do.	Dec. 4, 1780	30 00	Jan. 10, 1782	*10 00	*10 00
Inspector of more than one brigade	May 5, 1778	*30 00			*30 00
Inspector of one brigade	“ “	*20 00			
“ of cattle	Jan. 17, 1780	4 00 per day.			
JUDGE ADVOCATE	July 29, 1776	20 00	April 11, 1777	60 00	75 00
Deputy do.	April 11, 1777	*15 00			*15 00
MUSTER-MAST'S DEPARTMENT: (abolished Jan 12, 1780.)					
Muster-master-general	July 29, 1776	40 00	April 4, 1777	50 00	
Com'y-gen. of musters	April 4, 1777	80 00			
Commissary of musters	June 16, 1776	40 00			
Muster-master	April 4, 1777	35 00	Aug. 6, 1777	45 00	

† Purchasing commissaries allowed commissions instead of salaries, by Resolution of March 18, 1778.

\* In addition to pay in the line.

# PAY OF THE REVOLUTIONARY ARMY.

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GRADE.	CREATED.	PAY PER MONTH.	INCREASE OR DECREASE OF PAY.	PAY PER MONTH.	PAY AT CLOSE OF WAR.
<b>PAY-MASTER'S DEPARTMENT:</b>					
Pay-master-general	June 16, 1776	100 00			150 00
Deputy do	" "	50 00			Comm.
Assistant to deputy do	Jany. 9, 1776	25 66	Aug. 28, 1779	50 00	
Paymaster to Va. troops	Feb. 15, 1776	50 00			
" in northern dept.	Jan. 30, 1777	75 00			
<b>QUARTER-MAST. GENL.'S DEPT.:</b>					
Quarter-master-general	June 16, 1776	80 00			166 66
Deputy do	" "	40 00			125 00
Deputy in northern depart.	April 11, 1777	60 00			75 00
Deputy to do	May 13, 1779	20 00			
Assistant-quarter-master	June 5, 1776	pay of captain.	May 14, 1777	40 00	30 00
"	"		May 13, 1779	140 00	
Assistants in qr.-mast'r's dept.	Oct. 23, 1782	30 00			
Brigade quarter-masters	May 27, 1778	*15 00	July 15, 1780	*20 00	*15 00
Secretary to com.-general	June 16, 1776	66 00			
" " a major-gen.	" "	33 00			
<b>MEDICAL DEPARTMENT:</b>					
Surgeon, Army	Dec. 8, 1776	25 00			
Surgeon-general	April 8, 1777	5 00 pr day			
Senior surgeon	" "	4 00			
Second senior surgeon	" "	2 00			
Surgeon in hospital	July 17, 1776	1 66½			
" regimental	June 5, 1776	33 33½	April 8, 1777	\$2 pr. day.	
Surgeons' mates, regimental	April 8, 1777	1 33½			
" in hospital	July 17, 1776	1 00	Sept. 30, 1780	50 00	
<b>WAGON-MASTER-GEN. DEPT.:</b>					
Wagon-master-general	May 11, 1777	75 00			
Deputy-wagon-master-general	" "	50 00			
Assis.-dep.-wag.-mast.-general	July 15, 1780	45 00			
Wagon-master	May 11, 1777	40 00	May 11, 1779	80 00	60 00
Assistant wagon-mast.	July 15, 1780	40 00			
Wagon conductor	May 11, 1777	40 00	July 15, 1780	35 00	20 00
Do. if taken from line	July 15, 1780	12 00	Oct. 23, 1782	*20 00	
TEAMSTERS, detailed from line		pay of privates			
Continental in Conn. from		\$14 50 to \$16			
" '77 for 3 years	Apr. 17, 1779	per month			
" enlisted by comdr. in					
chief, not to exceed		40 00			
" employed in Q. M. Genl.					
department	June 14, 1779	13 33½			
<b>ENGINEER DEPARTMENT:</b>					
Chief engineer	June 16, 1776	60 00			
Assistant chief engineer	" "	20 00	Jan. 16, 1776	25 66	
" " "	May 18, 1776	30 00			
" " "	May 11, 1779	same as artillery			
<b>ENGINEERS.</b>					
Captain	May 27, 1780	50 00			50 00
Lieutenant	" " "	33 33½			33 33½
Cadet—pay as per roll, if not					
designated as an officer pay					
of private					
Sergeant	" " "	10 00			10 00
Corporal	" " "	9 00			9 00
Private	" " "	8 33			8 33
<b>SAPPERS AND MINERS:</b>					
Same pay as engineers					
<b>ARTILLERY:</b>					
Colonel					100 00
Lt. colonel					75 00
Major					62 50
Captain	July 29, 1776	25 66	May 27, 1778	50 00	50 00
Captain-lieutenant	" " "				33 33½
Lieutenant	" " "	25 66	" " "	33 33½	38 33½
Paymaster	May 27, 1778	*25 00			*30 00
Adjutant	" " "	*16 00			*16 00
Quarter-master	" " "	*16 00			*16 00
Surgeon	June 5, 1776	33 33½	May 27, 1778	75 00	50 00
Surgeon's mate	May 27, 1778	50 00			42 00
Sergeant major	" " "	11 25			11 25
Fife-major	" " "	10 33			10 33
Drum-major	" " "	10 33			10 33

\* In addition to pay in the line.

## PAY OF THE REVOLUTIONARY ARMY.

GRADE.	CREATED.	PAY PER MONTH.	INCREASE OR DECREASE OF PAY.	PAY PER MONTH.	PAY AT CLOSE OF WAR.
Sergeant .....	July 27, 1775	8 33½	May 27, 1778	10 25	10 00
Bombardier .....	July 29, 1775	7 00	" " "	9 00	9 00
Corporal .....	" " "	7 50	" " "	9 00	9 00
Gunner .....	May 27, 1778	8 66			8 66
Matross .....	July 29, 1775	6½	May 27, 1778	8 33	8 33
CAVALRY AND DRAGOONS					
Colonel .....					22 75
Lt. Colonel .....					15 00
Major .....					12 00
Captain .....	Mar. 14, 1777	50 00			50 00
Lieutenant .....	" " "	33 33½			33 33½
Cornet .....	May 27, 1778	26 66			26 66
Riding master .....	Mar. 14, 1777	33 33½			33 33½
Paymaster .....	" " "	60 00	May 27, 1778	*25 00	*25 00
Adjutant .....	July 29, 1775	18 33	May 27, 1778	*15 00	*15 00
Quarter-master Cavalry .....	Mar. 14, 1777	16 66	" " "	*15 00	*15 00
" " Dragoons .....	Mar. 14, 1777	50 00	" " "	*15 00	*15 00
Surgeon .....	Dec. 8, 1778	25 00	" " "	60 00	60 00
Surgeon's mate .....	May 27, 1778	40 00	Sept. 30, 1780	45 00	45 00
			Mar. 19, 1782	40 00	40 00
Quarter-master Sergeant .....	May 27, 1778	15 00			15 00
Sergeant .....	Mar. 14, 1777	15 00			15 00
Trumpet-major Dragoons .....	" " "	11 00			11 00
" " Cavalry .....	May 27, 1778	11 00			11 00
Trumpeter .....	Mar. 14, 1777	10 00			10 00
Saddler .....	May 27, 1778	10 00			10 00
Farrier .....	" " "	10 00			10 00
Pifer .....	" " "	8 66			8 66
Corporal .....	Mar. 14, 1777	10 00			10 00
Dragoon .....	Mar. 14, 1777	8 33			8 33
RANGERS.					
Lieut.-colonel .....	July 24, 1776	Pay Inf. Col.			
Major .....	" " "	" " Lt. Col.			
Captain .....	" " "	" " Major			
Lieutenant .....	" " "	" " Capt.			
Sergeant .....	" " "	" " Ena.			
Surgeon .....	" " "	33 33			
Paymaster .....	" " "	26 66			
Privates .....	" " "	12 50			
INFANTRY.					
Colonel .....	July 29, 1775	50 00			75 00
Lieutenant-colonel .....	" " "	40 00	Oct'r. 7, 1776	60 00	60 00
Major .....	" " "	40 00	" " "	50 00	50 00
Captain .....	June 14, 1775	20 00	" " "	40 00	40 00
" " marching regiments .....	Nov'r. 7, 1775	26 66	" " "	40 00	40 00
" " Lieutenants .....	" " 4, 1775	26 66	" " "		26 66
Lieutenants .....	June 14, 1775	13 33	" " "	26 66	26 66
Ensign .....	July 29, 1775	10 00	" " "	20 00	20 00
Paymaster and clothier .....	May 27, 1778	*20 00	Jan. 12, 1781	*30 00	*30 00
Adjutant .....	July 29, 1775	18 33	May 27, 1778	*13 00	*13 00
Quarter-master .....	" " "	18 33	" " "	*13 00	*13 00
Surgeon .....	June 5, 1776	33 33	" " "	60 00	60 00
Surgeon's mate .....	April 8, 1777	11-3 pr day	" " "	40 00	40 00
	Sept. 30, 1780	45 00	Mar. 19, 1782	40 00	40 00
Sergeant-major .....	May 27, 1778	10 00			10 00
Quarter-master sergeant .....	" " "	10 00			10 00
Sergeant .....	June 14, 1775	8 00	May 27, 1778	10 00	10 00
Drum-major .....	May 27, 1778	9 00			9 00
Fife-major .....	July 10, 1776	8 66			9 00
Drummer .....	June 14, 1775	7 33			7 33
Pifer .....	July 29, 1775	7 33			7 33
Corporal .....	June 14, 1775	7 33			7 33
Private .....	" " "	6 66			6 66
PROVOSTS.					
Captain .....	May 27, 1778	50 00			50 00
Lieutenant .....	" " "	33 33			33 33
Clerk .....	" " "	33 33			33 33
Quarter-master sergeant .....	" " "	15 00			15 00
Sergeant .....	" " "	15 00			15 00
Trumpeters .....	" " "	10 00			10 00
Corporals .....	" " "	10 00			10 00
Executioners .....	" " "	10 00			10 00
Privates .....	" " "	8 33			8 33

\* In addition to pay in the line.

### PAY OF THE REVOLUTIONARY NAVY.

Statement showing the various Naval Offices created by Congress for service in the Revolutionary War, with the date and pay of each grade; carefully compiled from the Journals of Congress.

GRADE.	DATE OF REG.	PAY.	V. OF 20 GUNS.	10 TO 20 G.	UNDR 10 G.
Captain,.....	Nov. 28, 1775	\$32 00	-----	-----	-----
Lieutenants commanding.....	Nov. 15, 1776	-----	\$60 00	\$48 00	48 00
Lieutenants.....	Nov. 4, 1775	20 00	-----	-----	30 00
	Nov. 15, 1776	-----	34 00	24 00	24 00
Surgeon.....	Nov. 28, 1775	21 33	-----	-----	-----
	Nov. 15, 1776	-----	25 00	21 33	21 33
	July 16, 1777	-----	34 00	24 00	24 00
Surgeon's mate.....	Nov. 28, 1775	13 33	-----	-----	-----
	Nov. 15, 1776	-----	15 00	13 33	13 33
Purser.....	Nov. 28, 1775	21 33	-----	-----	-----
	Nov. 15, 1776	-----	25 00	21 33	21 33
	July 16, 1777	-----	34 00	24 00	24 00
Chaplain.....	Nov. 28, 1775	20 00	-----	-----	-----
Master.....	Nov. 15, 1776	20 00	-----	-----	-----
	Nov. 15, 1776	-----	30 00	24 00	24 00
Mate.....	Nov. 28, 1775	15 00	-----	-----	-----
Midshipman.....	Dec. 9, 1775	12 00	-----	-----	-----
Boatswain.....	Nov. 28, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	-----	15 00	13 00	12 00
Gunner.....	Nov. 28, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	-----	15 00	13 00	12 00
Carpenter.....	Nov. 28, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	-----	15 00	13 00	12 00
Sail-maker.....	Dec. 9, 1775	12 00	-----	-----	-----
	Nov. 15, 1776	10 00	-----	-----	-----
Captain's clerk.....	Nov. 28, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	-----	15 00	12 00	12 00
Boatswain's mates, 1st.....	Nov. 28, 1775	9 50	-----	-----	-----
" " " 2nd.....	Nov. 15, 1776	8 00	-----	-----	-----
	Nov. 15, 1776	-----	9 50	9 00	9 00
Carpenter's mates.....	Nov. 28, 1775	10 66	-----	-----	-----
	Nov. 15, 1776	-----	9 50	9 00	9 00
Coxswains.....	Dec. 9, 1775	9 00	-----	-----	-----
Gunner's mates.....	Nov. 28, 1775	10 66	-----	-----	-----
	Nov. 15, 1776	-----	9 50	9 00	9 00
Quarter-gunners.....	Dec. 9, 1775	8 00	-----	-----	-----
Master-at-arms.....	Nov. 15, 1776	-----	10 00	9 00	9 00
Armorsers.....	Dec. 10, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	9 00	-----	-----	-----
Steward.....	Nov. 24, 1776	13 50	-----	-----	-----
	Nov. 15, 1776	10 00	-----	-----	-----
Cooper.....	Nov. 24, 1775	15 00	-----	-----	-----
	Nov. 15, 1776	9 00	-----	-----	-----
Cook.....	Dec. 9, 1775	12 00	-----	-----	-----
	Nov. 15, 1776	-----	9 00	8 50	8 50
Quarter-master.....	Dec. 9, 1775	9 00	-----	-----	-----
	Nov. 15, 1776	-----	9 00	8 50	8 50
Sail-maker's mate.....	Nov. 15, 1776	8 33	-----	-----	-----
Yeoman.....	Dec. 9, 1775	9 00	-----	-----	-----
	Nov. 15, 1776	-----	9 50	9 00	9 00
Seaman.....	Nov. 28, 1775	6 66	-----	-----	-----
	Dec. 13, 1775	8 00	-----	-----	-----
Pilot, (paid at usual rate)		-----	-----	-----	-----

## MARINES OF THE REVOLUTIONARY WAR.

GRADES.	DATE OF RES.	PAY.
Captain.....	Nov. 28, 1775	\$26 66
Lieutenant.....	Nov. 15, 1776	30 00
Bergeant.....	Nov. 4, 1775	18 00
Corporal.....	May 27, 1778	8 00
Drummer.....	Nov. 28, 1775	7 33
Fifer.....	" " "	7 33
Marine.....	" " "	7 33
	" " "	6 66

## PAY OF THE ARMY AT THE CLOSE OF THE WAR IN 1815.

Rank or Grade.	Pay per Month.	Rank or Grade.	Pay per Month.
Major-general .....	\$300	Assistant superintendent of artificers .....	\$ 30
Sec. to general commanding army .....	24*	Master workman of artificers .....	30
Aid-de-camp to major-general .....	24*	Under workman of artificers .....	18
Brigadier-general .....	104	Colonel of ordnance .....	99
Aid to brigadier-general .....	20*	Lieutenant-colonel of ordnance .....	75
Brigade-major .....	24*	Major of ordnance .....	69
Brigade-chaplain .....	50*	Captain of ordnance .....	50
Judge-advocate .....	50*	First lieutenant of ordnance .....	33½
Adjutant and inspector-general .....	104	Second lieutenant of ordnance .....	33½
Adjutant-general .....	90	Third lieutenant of ordnance .....	30
Inspector-general .....	75	Master armorer of ordnance .....	30
Assistant inspector-general .....	61	Master carriage-maker of ordnance .....	30
Topographical engineer .....	60	Master blacksmith of ordnance .....	30
Assistant topographical engineer .....	40	Armorer of ordnance .....	18
Paymaster-general .....	166½	Carriage maker of ordnance .....	18
Deputy paymaster-general .....	50*	Blacksmith of ordnance .....	18
Assistant deputy paymaster-general .....	30*	Artificer of ordnance .....	13
District paymaster .....	50	Laborer of ordnance .....	9
Assistant district paymaster .....	40	Physician and surgeon-general .....	250½
Quartermaster-general .....	104	Apothecary-general .....	150
Quartermaster-general .....	75	Assistant apothecary .....	45
Deputy quartermaster-general .....	60	Hospital surgeon .....	75
Assistant deputy quartermaster-gen'l .....	40	Hospital surgeon's mate .....	60
Principal wagon-master .....	40	Steward of hospital .....	30
Wagon-master .....	30	Ward-master of hospital .....	18
Assistant forage-master .....	30	Garrison surgeon .....	45
Conductor of artillery .....	33½	Garrison surgeon's mate .....	30
Principal barrack-master .....	40	Professor of natural & experimental philosophy .....	60
Deputy barrack-master .....	30	Asst. professor of do. do. .....	45
Commissary-general of purchases .....	250	Professor of mathematics .....	40
Deputy commissary of purchases, 2½ per cent. on disbursements .....		Asst. professor of mathematics .....	40
Super. general of military supplies .....	250	Professor of the art of engineering .....	50
Special commissary of milit'y supplies .....	60	Asst. professor do. do. .....	40
Asst. commissary of military supplies .....	60	Teacher of the French language .....	40
Superintendent of artificers .....	45	Teacher of drawing .....	40

RANK OR GRADE.	Corps of Engin's.	Light Inf'ty.	Corps of Artill'y.	Light Drag's.	Inf. and riflemen	Rangers	Sea fencibles.
Colonel .....	\$75	\$90	\$90	\$90	\$75	.....	.....
Lieutenant-colonel .....	60	75	75	75	60	.....	.....
Major .....	50	60	60	60	50	.....	.....
Adjutant and paymaster, each .....	10*	10*	10*	10*	10*	.....	.....
Quartermaster .....	10	10	10	10	10	.....	.....
Surgeon .....	60	.....	60	60	60	.....	.....
Surgeon's mate .....	45	.....	45	45	45	.....	.....
Sergeant-major .....	12	.....	12	12	12	.....	.....
Quartermaster-sergeant .....	12	12	12	12	12	.....	.....
Principal musician .....	11	11	.....	11	11	.....	.....
Captain .....	40	50	50	50	40	50	\$40
First lieutenant .....	30	33½	33½	33½	30	33½	30
Second lieutenant .....	25	33½	33½	33½	25	33½	25
Do. and conductor of artillery .....	.....	30	30	30	23	30	23
Third do. do. do. .....	.....	.....	.....	26½	.....	.....	.....
Cornet .....	.....	.....	.....	20½	20	26½	.....
Ensign .....	.....	.....	.....	20½	.....	.....	.....
Riding master .....	.....	.....	.....	.....	.....	.....	.....
Master of the sword .....	.....	.....	.....	.....	.....	.....	.....
Cadet of military academy .....	16	.....	.....	.....	.....	.....	.....
Sergeant .....	11	11	11	11	11	.....	.....
Corporal .....	10	10	10	10	10	.....	.....
Musician .....	9	9	9	9	9	.....	.....
Private .....	8	8	8	8	8	.....	.....
Boat-swain of sea-fencibles .....	.....	.....	.....	.....	.....	.....	20
Gunner of do. .....	.....	.....	.....	.....	.....	.....	20
Quarter gunner of do. .....	.....	.....	.....	.....	.....	.....	18
Men of do. do. .....	.....	.....	.....	.....	.....	.....	12
Driver of artillery .....	.....	8	.....	.....	.....	.....	.....
Artificer .....	13	13	.....	.....	.....	.....	.....
Saddler .....	.....	13	.....	13	.....	.....	.....
Farrier .....	.....	13	.....	13	.....	.....	.....
Blacksmith .....	.....	.....	.....	18	.....	.....	.....

\* In addition to pay in the line.

PAY OF THE ARMY AT THE PRESENT TIME

RANK AND CLASSIFICATION OF OFFICERS.	PAY. Per Month.	SUBSISTENCE.		FORAGE.		SERVANTS.		Total Monthly Pay.
		No. of Rations. Monthly Com- mutation value.	20 cents for each Ration.	No. of Horses. Monthly Com- mutation value.	\$8 p. mo. for each horse.	No. of Servants Monthly Com- mutation value.	Pay, &c. of a Private.	
Major-general	\$200 00	15	\$90	3	\$24	4	\$62 00	\$376 00
Senior aid-de-camp to general-in-chief	60 00	4	24	3	24	2	33 00	141 00
Aid-de-camp, besides pay of lieutenant	24 00	1	6	1	8	2	33 00	38 00
Brigadier general	104 00	12	72	3	24	3	46 50	246 50
Aid-de-camp, besides pay of lieutenant	20 00	1	6	1	8	2	33 00	28 00
Adjutant-general, Colonel	90 00	6	36	3	24	2	33 00	183 00
Assistant adj.-general, Lieut. colonel	75 00	5	30	3	24	2	33 00	162 00
Major	60 00	4	24	3	24	2	33 00	141 00
Captain	50 00	4	24	1	8	1	16 50	95 50
Judge-advocate, Major	60 00	4	24	3	24	2	33 00	141 00
Inspector-general, Colonel	90 00	6	36	3	24	2	33 00	183 00
Quartermaster-general, Brigadier-general	104 00	12	72	3	24	3	46 50	246 50
Assistant quarterm.-general, Colonel	90 00	6	36	3	24	2	33 00	183 00
Deputy quartermaster-gen., Lieut. colonel	75 00	5	30	3	24	2	33 00	162 00
Quartermaster, Major	60 00	4	24	3	24	2	33 00	141 00
Assistant quartermaster, Captain	50 00	4	24	1	8	1	16 50	95 50
Commissary-gen. of subsistence, Colonel	90 00	6	36	3	24	2	33 00	183 00
Assist. commissary-gen., Lieut. colonel	75 00	5	30	3	24	2	33 00	162 00
Commissary of subsistence, Major	60 00	4	24	3	24	2	33 00	141 00
Captain	50 00	4	24	1	8	1	16 50	95 50
Assistant comm'y, besides pay of lieutenant	20 00	1	6	1	8	2	33 00	20 00
Paymaster-general, \$2,500 per annum	60 00	4	24	3	24	2	33 00	208 33
Deputy paymaster-general	75 00	5	30	3	24	2	33 00	162 00
Paymaster	60 00	4	24	3	24	2	33 00	141 00
Surgeon-general, \$2,500 per annum	60 00	4	24	3	24	2	33 00	208 33
Surgeons of 10 years' service	60 00	4	24	3	24	2	33 00	165 00
Surgeons of less than 10 years' service	50 00	4	24	3	24	2	33 00	141 00
Assistant-surgeons of 10 years' service	50 00	4	24	1	8	1	16 50	122 50
of 5 years' service	50 00	4	24	1	8	1	16 50	98 50
Assist. surg. of less than 5 years' service	33 33	4	24	1	8	1	16 50	81 83
ENGINEERS, TOPOG. ENGRS. AND ORDNANCE DEPARTMENT.								
Colonel	90 00	6	36	3	24	2	33 00	183 00
Lieutenant-colonel	75 00	5	30	3	24	2	33 00	162 00
Major	60 00	4	24	3	24	2	33 00	141 00
Captain	50 00	4	24	1	8	1	16 50	94 50
First lieutenant	33 33	4	24	1	8	1	16 50	81 83
Second lieutenant (brevet the same)	33 33	4	24	1	8	1	16 50	81 83
MOUNTED DRAGOONS AND RIFLEMEN.								
Colonel	90 00	6	36	3	24	2	33 00	183 00
Lieutenant-colonel	75 00	5	30	3	24	2	33 00	162 00
Major	60 00	4	24	3	24	2	33 00	141 00
Captain	50 00	4	24	2	16	1	16 50	106 50
First lieutenant	33 33	4	24	2	16	1	16 50	89 83
Second lieutenant (brevet the same)	33 33	4	24	2	16	1	16 50	89 83
Adj. & reg. quart'm'r, besides pay of lieut.	10 00	1	6	1	8	2	33 00	10 00
ARTILLERY AND INFANTRY.								
Colonel	75 00	6	36	3	24	2	31 00	166 00
Lieutenant-colonel	60 00	5	30	3	24	2	31 00	145 00
Major	50 00	4	24	3	24	2	31 00	129 00
Captain	40 00	4	24	1	8	1	15 50	79 50
First lieutenant	30 00	4	24	1	8	1	15 50	69 50
Second lieutenant (brevet the same)	25 00	4	24	1	8	1	15 50	64 50
Adj. and reg. quart'm'r, besides pay of lieut.	10 00	1	6	1	8	2	33 00	18 00
Pay per Month.								
Prof. of natural and experimental phi- losophy	\$75							
Assist. prof. do. do.	50							
Professor of Mathematics and commander of corps of cadets, each	60							
Assistant professor of mathematics	50							
Professor of engineering	60							
Ast. prof. of engineering and instructor of practical engineering, each	50							
Pay per Month.								
Professor of chemistry, mineralogy and geology	60							
Asst. prof. of chemistry, mineralogy, and geology, and assist't professor of ethics, each	50							
Chaplain and professor of ethics	60							
Teacher of French language	50							
Teacher of drawing	50							
Master of the sword	40							



## PAY OF THE ARMY.

<i>Pay per Month.</i>	<i>Pay per Month</i>
Military storckeeper, clothing depot, \$1,250 per annum	four companies, pay of ordnance ser- geant..... \$*18
Storckeeper of ordnance at arsenals of construction, \$1,250 per annum.	Hospital steward, pay of first sergeant... *16
Storckeeper of ordnance, \$800 per annum.	Matron..... 6
Chaplain not to exceed..... \$40	<b>ARTILLERY AND INFANTRY.</b>
Serg. maj. of drag. or mounted riflemen, *17	Cadet..... 24
Q'rmaster serg. of drag. do. *17	Sergeant-major..... *17
Chief bugler of do. do. *17	Quartermaster sergeant..... *17
First sergeant of do. do. *16	Principal musician of infantry..... *17
Sergeant of do. do. *13	First sergeant..... *16
Corporal of do. do. *10	Ord'n'ce serg. in addition to pay of serg., *6
Bugler of do. do. *9	Sergeant..... *12
Far. & blacka'h of do. do. *11	Corporal..... *9
Private of drag. or mounted riflemen..... *8	Artificer of artillery..... *11
Master armorer, master carriage-maker, master blacksmith of ordnance..... *30	Musician..... *8
Armorer of ordnance..... *16	Private..... *7
Blacksmith of do. .... *16	<b>SAPPERS, MINERS, AND PENTONERS.</b>
Carge maker of do. .... *16	Sergeant..... *30
Artificer of do. .... *13	Corporal..... *16
Laborer of do. .... *9	Musician..... *8
Hospital steward, at a post of more than	Private, of the 1st class..... *13
	Private, of the 2d class..... *9

\* Se. Act of August 4, 1854 (following) increasing the pay of the army for three years from 1st January, 1855.

**AN ACT** to increase the pay of the rank and file of the army and to encourage enlistments.

APPROVED, AUGUST 4, 1854.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the pay of the non-commissioned officers musicians and privates of the army of the United States shall be increased at the rate of four dollars per month, and to continue for the term of three years from and after the first day of January next, and until otherwise fixed by law.*

**SEC. 2.** *And be it further enacted, That every soldier, who, having been honorably discharged from the service of the United States, shall, within one month thereafter, re-enlist, shall be entitled to two dollars per month in addition to the ordinary pay of this grade, for the first period of five years after the expiration of his previous enlistment, and a further sum of one dollar per month for each successive period of five years so long as he shall remain continuously in the army; and that soldiers now in the army who have served one or more enlistments, and been honorably discharged, shall be entitled to the benefits herein provided for a second enlistment.*

**SEC. 3.** *And be it further enacted, That soldiers who served in the war with Mexico, and received a certificate of merit for distinguished services, as well those now in the army as those that may hereafter enlist, shall receive the two dollars per month to which that certificate would have entitled them had they remained continuously in the service.*

**SEC. 4.** *And be it further enacted, That non-commissioned officers, who, under the authority of the seventeenth section*

of the act approved March third, eighteen hundred and forty-seven, were recommended for promotion by brevet to the lowest grade of commissioned officer, but did not receive the benefit of that provision, shall be entitled, under the conditional pay recited in the foregoing section, to the additional pay authorized to be given to such privates as received certificates of merit.

SEC. 5. *And be it further enacted*, That the President of the United States be, and he is hereby authorized, by and with the advice and consent of the Senate, to confer the brevet of second lieutenant upon such meritorious non-commissioned officers as may, under regulations to be established, be brought before an army board, composed of four officers of rank, specially convened for the purpose, and be found qualified for the duties of commissioned officers; and to attach them to regiments as supernumerary officers, according to the provisions of the fourth section of the act approved April twenty-ninth, eighteen hundred and twelve, entitled "An act making further provision for the corps of engineers."

SEC. 6. *And be it further enacted*, That the allowance to soldiers employed at work on fortifications, in surveys, in cutting roads, and other constant labor, of not less than ten days, authorized by the act approved March second, eighteen hundred and nineteen, entitled "An act to regulate the pay of the army when employed on fatigue duty," be increased to twenty-five cents per day for men employed as laborers and teamsters, and forty cents per day when employed as mechanics, at all stations east of the Rocky mountains, and to thirty-five cents and fifty cents per day, respectively, when the men are employed at the stations west of those mountains.

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The following regulations have been established to carry out the provisions of the 5th section of the above act of Congress.

GENERAL ORDERS, } WAR DEPARTMENT,  
No. 17, } ADJUTANT GENERAL'S OFFICE,  
Washington, Oct. 4, 1854.

The following regulations have been established to carry out the provisions of the 5th section of the act of August 4th, 1854, relative to the promotion of non-commissioned officers:

1. An Army Board, composed of four ranks, will be convened, annually, on the first Monday in September, in the City of Washington, for the examination of such non-commissioned officers as may be ordered to appear before them by the War Department.

2. To aid the Department in the selection of proper candidates for promotion, company commanders will report to their Colonels all such non-commissioned officers as in their opinion, by education, conduct and services, seem to merit advancement. In these reports must be set forth a description of the candidate, his length of service as non-commissioned officer and as private soldier, his character as to fidelity and sobriety, his physical qualifications and mental abilities, the extent to which his talents have been cultivated, and his fitness generally to discharge the duties of a commissioned officer. If recommended on account of meritorious services, the particular services referred to must be stated in detail. On receiving the reports of company commanders, the Colonel will assemble a Board, to consist of four officers of his regiment, of as high rank as the convenience of the service will admit, to make a preliminary examination into the claims and qualifications of those non-commissioned officers who may appear to him deserving promotion. Where the Colonel has not authority to convene such Board, the regimental officers necessary to form it will, on application to the proper Department commander, be placed subject to his orders. The Board, constituted as above, will submit a full statement in the case of each candidate examined; and on these statements the Colonel will indorse his remarks and forward them, through the Head Quarters of the Army, to the Adjutant General, to be laid before the Secretary of War.

3. The foregoing reports must be transmitted in time to reach Washington by the 1st day of May in each year, and such non-commissioned officers as the Secretary of War may consider suitable candidates for promotion will receive orders from the Adjutant General's office to present themselves for examination, by the board to be convened on the first Monday in September following. As a general rule one fourth of the vacancies occurring annually in the Army will be filled from the non-commissioned grades. The persons thus appointed shall, as far as practicable, be attached to the regiments in which their meritorious services had been rendered, and will thereafter succeed to vacancies in their particular arm of service according to seniority.

4. No candidate will be examined who is married; who is under twenty or over twenty-eight years of age; who, in the judgment of the board, has not the physical ability to endure the exposures of service; who has any deformity of body, or whose moral habits are bad.

5. The board, being satisfied of these preliminary points, will proceed to examine each candidate separately:

First.—In his knowledge of English grammar, and ability to read and write with facility and correctness.

Second.—In his knowledge of arithmetic, and his ability in the application of its rules to all practical questions, and in his knowledge of plain and solid geometry.

Third.—In his knowledge of geography, particularly in reference to the northern continent of America, and in his ability to solve the usual problems on the terrestrial globe; also, in his knowledge of what is usually denominated popular astronomy.

Fourth.—In his knowledge of history, particularly in reference to his own country.

Fifth.—In his knowledge of the Constitution of the United States, and of the organization of the Government under it, and of the general principles which regulate international intercourse.

6. After having completed the examination of all candidates who have presented themselves, the board will then submit their names to the War Department in order of relative merit. In determining this order the board will consider eight as the maximum of the first, fourth, and fifth heads, and ten the maximum of the second and third heads; and no candidate will be passed by the board who shall not have received at least half the number of maximum marks on each head or subject of examination; and any candidate having passed, who is also a graduate from any college, shall be allowed five additional marks in his favor, which shall be taken into the account of his general merit.

7. In order to give effect, as early as practicable, to the intention of the law, the first general examination of non-commissioned officers, except such as are serving in the Department of New Mexico, will take place at Washington on the second Monday of January next. Those serving in New Mexico will be examined the first Monday in June following. Colonels will accordingly take immediate measures for forwarding, in due season, the reports necessary to aid in the selection of proper candidates to be brought before these first two Boards of examination.

By order of the SECRETARY OF WAR:

S. COOPER, *Adjutant General*.



APPROVED, AUGUST 5, 1854.

SEC. 5. *And be it further enacted*, That the pay of the boatswains, gunners, carpenters, and sailmakers of the Navy, shall be as follows :

On leave or waiting orders, per annum, six hundred dollars ; shore duty, seven hundred dollars ; sea service, nine hundred dollars : An addition of two per centum upon the foregoing rates for every year's sea service, and an addition upon sea pay of ten per centum when serving in ships with four hundred men, and twenty per centum when serving in ships with nine hundred men.

GENERAL ORDER.—From and after this date the monthly pay of the petty officers, seamen, ordinary seamen, landsmen, boys, etc., in the Navy, will be increased as follows :

Yeomen, in ships-of-the-line, to.....	\$45
Do. in frigates, to.....	40
Do. in sloops, to.....	30
Do. in vessels smaller than sloops, to.....	24
Armorsers, in ships-of-the-line, to.....	30
Do. in frigates, to.....	25
Do. in sloops, to.....	20
Ship's steward, to.....	30
Boatswain's, gunner's, and carpenter's mates, and master-at-arms, to...	25
Ship's cook, coxswain, quartermasters, captains of forecandle, and surgeon's steward, to.....	24
Sailmaker's mates, quarter gunners, captains of tops, captains of afterguards, captain of hold, cooper, painters, armorer's mate, ship's corporal, master of band, cabin steward, ward-room steward, cabin cook, and ward-room cook, to.....	20
Seamen, to.....	18
Musicians of 1st class, to.....	15
Ordinary seamen, to.....	14
Landsmen and musicians of 2d class, to.....	12
Boys, to.....	\$8, 9, and 10

This increase will not apply to those enlisted for receiving-ships and shore stations. Those now in the service who have received a bounty under the General Order of May 23, 1853, will be charged with such part of the bounty as is proportioned to the unexpired term of their enlistment.

An advance of two months' pay only will be made when the recruit shall be received and duly entered on the books of some receiving-ship. The other existing general regulations with regard to enlistments will continue in force.

NAVY DEPARTMENT, August 11, 1854.

J. C. DOBBIN,

*Secretary of the Navy.*

## PAY OF THE MARINE CORPS.

Grade.	Pay per month.	Grade.	Pay per month.
COLONEL COMMANDANT.....	\$75	On shore duty—of 20 years' service....	\$40
LIEUT. COLONEL.....		Commanding a guard in receiving ship	
At sea or on leave.....	60	or squadron—of 30 years' service....	40
Commanding.....	60	Commanding a guard in receiving ship	
MAJORS.....		or squadron—of 25 years' service....	40
At sea or on leave.....	50	CAPTAIN.....	
Commanding.....	50	Commanding a guard in receiving ship	
STAFF CAPTAINS.....		or squadron—of 20 years' service....	40
Adjutant and inspector.....	60	FIRST LIEUTENANT.....	
Pay and quarter-masters, each.....	60	At sea or on leave—of 20 years' service	30
STAFF LIEUTENANTS.....		At sea or on leave—of 15 years' service	30
Assistant quarter-master.....	50	At sea or on leave—of 10 years' service	30
CAPTAINS.....		On shore duty—of 20 years' service....	30
At sea or on leave—of 30 years' service	40	On shore duty—of 15 years' service....	30
At sea or on leave—of 25 years' service	40	On shore duty—of 10 years' service....	30
At sea or on leave—of 20 years' service	40	Commanding guard in receiving ship	
On shore duty—of 30 years' service....	40	or squadron—of 15 years' service....	30
On shore duty—of 25 years' service....	40		

Grade.	Pay per month.	Grade.	Pay per month.
Commanding guard in receiving ship or squadron—of 15 years' service....	\$30	ORDINARY SERGEANT .....	\$16
Commanding guard in receiving ship or squadron—of 10 years' service....	30	SERGEANT .....	13
SECOND LIEUTENANT—		CORPORAL .....	9
At sea or on leave—of 10 years' service	25	MUSICIANS .....	8
At sea or on leave—of 5 years' service	25	PRIVATE .....	7

\* Increased by Act of Aug. 5, 1854.

The following circular, issued by the Accounting Officers of the Treasury, will show the increase of pay provided for by the Act of 5th August, 1854, and the Regulations adopted to carry the same into effect.

TREASURY DEPARTMENT,  
FOURTH AUDITOR'S OFFICE, }  
October 16, 1854.

The act making appropriations for the naval service, approved August 5th, 1854, provides "That the non-commissioned officers, musicians, and privates of the United States Marine Corps shall be entitled to and receive the same pay and bounty for re-enlisting as are now, or may hereafter be allowed to the non-commissioned officers, musicians, and privates in the Infantry of the Army."—(10 Stat., 586.)

This extends the provisions of "An act to increase the pay of the rank and file of the army, and to encourage enlistments," approved August 4th, 1854, (10 Stat., 575,) in respect to pay, and of the 29th section of the act of July 5th, 1838, as to bounty (three months' extra pay), for re-enlisting, to the non-commissioned officers, musicians, and privates of the Marine Corps, from the date of the act—viz. : August 5th, 1854.

1. The pay of the non-commissioned officers, musicians, and privates of the Marine Corps is, therefore, increased at the rate of four dollars per month. The retention of one dollar per month, however, from the pay of the *musicians* and *privates* of the Marine Corps, directed by the act of March 2d, 1833, and extended to the whole term of their enlistment by the 5th section of the act of March 2d, 1849, (9 Stat., 378,) is to be continued.

2. Every non-commissioned officer, musician and private of the Marine Corps, who, having been honorably discharged from the service of the United States, shall, within one month thereafter, re-enlist, is entitled to two dollars per month in addition to the ordinary pay of his grade, for the first period of five years after the expiration of his previous enlistment, and a further sum of one dollar per month for each successive period of five years, so long as he shall remain continuously in the Marine Corps.

3. Every marine who was in service at the date of the passage of the act, who had served one or more enlistments and been honorably discharged, is entitled to the above additional pay provided for a second enlistment, viz. : two dollars per month for the first five years from the date of the act.

4. Every marine, honorably discharged before the passage of the act, but who re-entered service within one month after his discharge, and subsequently to the date of the act, is entitled, from the date of such re-entry, to two dollars per month in addition to the ordinary pay of his grade.

5. Every able-bodied non-commissioned officer, musician, or private soldier of the Marine Corps, who has re-enlisted since the fifth of August, 1854, or who may hereafter re-enlist into the Corps "within two months before or one month after the expiration of his term of service," is entitled to receive three months' extra pay as provided for like grades in the Army by the 29th section of the act approved July 5th, 1838.—(5 Stat., 260.)

The "three months' extra pay" (bounty) thus allowed (together with the increase of 4 dollars per month) is included in the ordinary pay of the grade in which the marine may be serving when discharged.

6. The allowance to marines employed at work on fortifications, in surveys, in cutting roads, and other constant labor, of not less than ten days, authorized

by the act approved March 2d, 1819, entitled "An act to regulate the pay of the Army when employed on fatigue duty," is increased to twenty-five cents per day for men employed as laborers and teamsters, and forty cents per day for men employed as mechanics, at all stations east of the Rocky mountains, and thirty five cents and fifty cents per day, respectively, when the men are employed at stations west of those mountains. The allowance of "whisky or spirits," or commutation therefor, is discontinued from and after August 5th, 1854.

7. The necessary data to enable the Paymaster and Pursers to calculate the additional pay and bounty should be entered upon the Transfer and Pay Rolls. The dates of the several re-enlistments, and whether the marine had been honorably discharged, should be entered opposite the name in each case, or the certificate of the Adjutant and Inspector, to that effect, should accompany the Pay Rolls.

A. J. O'BANNON,  
*Acting Fourth Auditor.*

Approved :

JOHN M. BRODHEAD,  
*Second Comptroller.*



## PAY FOR SERVICES IN THE ARMY, NAVY, AND MARINE CORPS.

### WAR OF THE REVOLUTION.

As Congress has long since ceased to make appropriations for the payment of arrears of pay and allowances for service in the Army, Navy, and Marine corps of the Revolution; the accounting officers of the Treasury have no jurisdiction over such claims. Persons having meritorious claims for such arrears of pay, or for claims against the Commissary's, Quarter-Master's, Hospital, Clothier's, or other Departments, can only obtain relief by a special act of Congress. There have been various resolutions and acts passed by Congress precluding these claims from payment, but which it is not deemed necessary to recite.

Claims for arrears of pay and allowances, extra pay and bounties, for services in the war of 1812, are examined and settled by the accounting officers of the Treasury. Those for services in the army, should be presented to the Third Auditor; those for services in the Navy and Marine Corps, to the Fourth Auditor.

The following form of application is in conformity with the rules of the accounting officers respecting claims for such arrears:

STATE OF ..... }  
COUNTY OF ..... } ss.

BE IT REMEMBERED, That on this ..... day of ..... A.D. one thousand eight hundred and fifty ....., personally appeared before me, the subscriber a Justice of the Peace in and for said county ....., and made oath in due form of law, and on his oath, states that he is the identical ..... who was a ..... in the company of ..... commanded by Capt. ...., in the Regiment commanded by Col. ...., that he enlisted at ..... on the ..... day of ..... 18..; and was honorably discharged at ..... on the ..... day of ..... 18..; on account of ..... and that there is due him from the United States, pay and allowances as such ..... from about the ..... day of ..... to the ..... day of ..... 18.., which he has never received from any agent or officer of the United States, nor sold, transferred, or in any manner alienated his right to the same. He makes this declaration as an application for the same.

And further, that he hereby appoints, ..... of ..... his attorney, and authorizes him to receive and receipt for a draft or certificate payable to deponent's order for whatever sum may be allowed on the same, and to attend to, and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money, that may be found due deponent, upon any account or claim now unsettled.

WITNESSES : .....

WITNESSES : .....

AND I HEREBY CERTIFY, that at the same time, personally appeared before me ..... and ..... known to me, to be two credible witnesses, and who being duly sworn, deposes and says, each for himself, that the above named ..... served in the Company and Regiment stated in his affidavit above; that the said ..... the above deponent, being now present, is, to their knowledge, the identical person named in the above deposition, that the said affidavit is correct, as they verily believe; that they are acquainted with the said ..... and that they are, each, wholly disinterested.

WITNESS :.....

SUBSCRIBED AND SWORN TO, before me, }  
upon the day and year first above written. }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY that....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was at the time of so doing, a ..... in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of....., County Court, (a Court of Record,) this.... day of..... A.D., 185....  
....., Clerk.

FORM OF APPLICATION FOR WIDOW, HEIR, OR ADMINISTRATOR.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT REMEMBERED, That on this..... day of..... A.D. one thousand eight hundred and fifty....., personally appeared before me, the subscriber ..... and made oath in due form of law, and on ..... oath, states that ..... is the ..... who was a ..... in the company of....., commanded by Capt..... in the regiment commanded by Col..... that he enlisted at ..... on the..... day of....., 184....; and was honorably discharged at..... on the..... day of....., 184....; that there is due from the United States, the pay and allowances of said deceased from the..... day of..... to the..... day of....., 18....; which has never been received by deponent, or any other person to deponent's knowledge and belief, from any agent or officer of the United States. *He* makes this declaration as an application for the same, not having sold, transferred, or in any manner alienated *his* right to the same.

And further, that *he* hereby appoints ..... *his* attorney, and authorizes him to receive and receipt for a draft payable to deponent's order for whatever sum may be allowed on the same, and to attend to, and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money, that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....  
WITNESS :.....

AND I HEREBY CERTIFY, that at the same time, personally appeared before me and ..... known to me, to be two credible witnesses, and who being duly sworn, deposes and says, each for himself, that the above named....  
(*Here state the circumstances under which the claimant represents the deceased soldier.*)

..... now present, is, to their knowledge, the

identical person named in the above deposition, and that the said affidavit is correct, as they verily believe; that they are acquainted with the said....., and that they are, each, wholly disinterested.

WITNESS:.....

SUBSCRIBED AND SWORN TO, before me, }  
upon the day and year first above written. }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was, at the time of so doing, a Justice of the Peace, in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of....., County Court, (a Court of Record,) this..... day of....., A.D., 185...

....., *Clerk*.

## CLAIMS FOR PAY: SERVICE SINCE THE WAR OF 1812.

All claims for Pay and allowances on account of service in the Army, Volunteers or Militia in the service of the United States, since the war of 1812, are examined and settled by the Accounting officers of the Treasury. These claims should be presented to the *Second Auditor*. Those pertaining to the Naval or Marine service, to the *Fourth Auditor*.

In all cases where the soldier has been discharged, whether living or not at the time of presentation of the claims, the descriptive certificate should be forwarded with the claim, or its absence accounted for.

## DECISIONS OF THE SECOND COMPTROLLER.

## OFFICERS' PAY.

[The references are to the volume and page of the books containing decisions in the office.]

1. The pay of Military officers commences from the date of their acceptance, they being from that date liable to duty.—*Vol. 11, p. 261; Vol. pp. 95, 248.*

2. The date of the acceptance of an appointment is resorted to, in ordinary cases, to ascertain the time when the service actually commenced. But when the time is known by other facts, that of acceptance is immaterial.—*Lieut. R. S. Smith's case, June 13, 1842.*

3. A staff appointment conferred on an officer in the line of the army is not a promotion, but an original appointment. Its pay will therefore commence from the date of the officer's acceptance.

Such acceptance may be either by letter or by commencing to perform duty.—*Vol. 15, p. 13.*

4. Performance of duty by an officer is regarded as sufficient evidence of his acceptance of the appointment to which the duty appertains.—*Lieut. W. M. D. McKissack's case, Dec. 17, 1840.*

5. Officers of the army, when suspended under sentence from duty merely, are entitled to their pay and rations.—*Vol. 6, p. 31.*

6. No pay can be allowed after an officer shall have ceased to continue in service.—*Vol. 13, p. 201.*

7. It has become a uniform rule, that when an officer of the Army or Navy is out of service, and is restored by reappointment, he cannot receive pay for the interval, except by act of Congress.—*Vol. 15, p. 394.*

8. By an order of the War Department, dated Sept. 23, 1841, no pay or emoluments can be allowed to officers who may thereafter be restored to rank for the time they may have been out of service.—*Vol. 14, p. 137; Vol. 13, p. 354.*

9. Under the act of 5th July, 1838, the two assistant adjutant generals, having the rank of major, are entitled to cavalry pay, as are also the assistant quarter-masters, and the Medical Department. And as cavalry pay is given by this act to the Colonel of Ordnance, the Commissary General, whose pay is under the act of April 14, 1818, the same with that of the Colonel of Ordnance, becomes also entitled to cavalry pay.—*Vol. 6, p. 569.*

10. An officer acting as Quarter-master General during the absence of that officer from the seat of Government, is not entitled to be paid in that capacity, either under the act of July 4, 1836, or otherwise.—*Vol. 15, p. 307.*

11. When a question arises, whether an officer of the Army did or did not hold a staff appointment during a particular period, the accounting officers must

always be governed by the records of the Department to which the appointment belongs. If those records are erroneous, it is the duty of that Department to correct them.—*Vol. 15, p. 429.*

12. Acting assistant commissaries are not entitled to the additional compensation given by the act of April 16, 1818, unless they are subalterns of the line of the Army.

And officers of the Engineers, Topographical Engineers, Ordnance, and the Medical Corps, do not belong to the line of the Army.—*Vol. 15, p. 407.*

13. An officer acting as commissary or quarter-master, is not entitled to the additional compensation therefor when on furlough.—*Vol. 6, p. 545.*

14. But one regimental quarter-master to each regiment raised for the Mexican War can legally be paid.—*Vol. 15, p. 353.*

15. The act of July 20, 1840, equalizing the compensation of the commandants of cadets and the professors of mathematics at the Military Academy, is superseded in this respect by the act of . . . . ., which gives to each of these officers \$2,000 per annum, besides the service rations to which they may respectively be entitled.—*Vol. 15, p. 466.*

16. The 2d section of the act of August 23, 1842, chap. 183, expressly prohibits any officer, whose pay and emoluments are fixed by law and regulations, from receiving any additional pay, extra allowances, or compensation in any form whatever, for the disbursement of the public money, or any other public service or duty, unless the same shall be authorized by law, and the appropriation therefor explicitly sets forth that it is for such additional pay, extra allowance, or compensation.—*Vol. 12, pp. 159, 268.*

17. A lieutenant in the line of the Army was, by proper authority, appointed adjutant, and while in the performance of his duties as such was promoted to a captaincy, to take rank from a date which included a portion of the time during which he performed the duties of adjutant. Held that he was not entitled to the pay of adjutant after the date of his promotion.—*Dec. Sec. Compt., Aug. 19, 1851.*

18. An officer of the Army on duty, and entitled to his pay and emoluments according to his rank, is not entitled to pay, at the same time, as an officer of militia.—*Vol. 6, p. 461.*

19. Under the laws of March 3, 1835, and March 3, 1839, allowances cannot be made for the detention of an officer or any other person in the service of the United States, whose salary or whose pay and emoluments are fixed by law, when ordered on special service; nor can any allowance be made for their expenses while on such service.—*Vol. 9, p. 508.*

20. Under an opinion of the Attorney General, given in 1842, charges for detention have ever since been disallowed. The prohibitory law applies not only to officers, but also to any other person whose salary or whose pay or emoluments are fixed by law and regulations.—*Vol. 10, p. 320.*

21. Under the act of September 28, 1850, granting extra pay to the commissioned officers and enlisted men serving in Oregon and California, officers are not entitled to the additional pay allowed to private soldiers, for their servants.—*Vol. 14, p. 211-12.*

22. There is no law authorizing a lieutenant, while in command of a company, to claim the pay of a captain.—*Vol. 8, p. 383.*

23. A captain and brevet major, assigned by general order to command a battalion of volunteers consisting of six companies, is entitled to brevet pay as major, but not in the pay of lieutenant colonel. To entitle an officer of the Army to the pay of a higher grade in the militia, he must be actually appointed to that grade, and not merely assigned to its command. Pay follows the commission held, not the duty performed.—*Vol. 15, p. 196.*

24. The inspectors employed at Springfield and Harper's Ferry can be allowed no greater compensation than that authorized by the 2d section of the act of Aug. 23d, 1842, chap. 186.—*Vol. 11, p. 459.*

25. An officer cannot be allowed extra pay for more than one service at the same time.—*Vol. 2, p. 335.*

26. An officer of the Army engaged in the Mexican boundary survey, and

paid at the rate of \$3,000 per annum salary, is not entitled to any allowances for transportation, and fuel, and quarters, during the time for which he is so paid.

27. An officer of the Army, while employed in the removal of Indians, is entitled to his actual expenses beyond what he would have been subjected to while stationary. And of these expenses he will be required to produce an account.—*Vol. 9, p. 39.*

28. An officer who is taken sick on his journey to attend a court martial, is entitled to his per diem allowance for the time he is detained by sickness.—*Lieutenant Belger's case, January 6, 1844.*

29. By a regulation of the War Department, made in conformity with law, officers are prohibited from passing away or transferring their accounts for any amount not actually due at the time.—*Vol. 11, p. 407.*

30. If an officer conveys away his pay, and afterwards revokes the authority given to receive it, the remedy of the assignee is against the officer. It is not incumbent upon the accounting officers to enforce private transactions of this character.—*Vol. 15, p. 133.*

31. Officers who have resigned, or otherwise left the Army, must take and subscribe the oath as required by the General Regulations of the Army, p. 352, before they can receive the arrearages of pay, etc., due to them.—*Vol. 10, p. 439; Vol. 11, p. 265.*

32. No part of the arrears due an officer who has resigned will be paid him, except upon a full and final settlement of the whole.—*Vol. 15, p. 208.*

33. The mere statement of an officer is not a sufficient voucher upon which to establish a claim.—*Vol. 12, p. 433.*

34. Where an act of Congress grants to the heirs of a soldier "thirty-five years' half-pay as a captain," in consideration of the military services of the ancestor, half-pay is considered as referring to the pay proper, and not to the emoluments or allowances.—*Vol. 15, p. 366.*

#### ALLOWANCE TO COMMANDERS OF COMPANIES.

35. A lieutenant in command of a company is not entitled by law or regulation to any additional pay or compensation, except the ten dollars per month allowed for the responsibility of arms, etc., under the law of 2d March, 1827.—*Vol. 12, p. 330.*

36. The law of March 2, 1827, gives the additional pay of \$10 per month to the officer in the actual command of a company, as compensation for his responsibility in respect to the clothing, etc., of the company. A constructive command is excluded by the terms of the act.—*Vol. 11, p. 308.*

37. The ten dollars per month provided for by the act of March 2, 1827, is payable to the officer having the actual command of the company; and where doubt exists as to who had the command, inquiry is made of the Adjutant General, whose answer on the point is conclusive.—*Vol. 13, p. 69.*

38. The \$10 per month allowed to commanders of companies is solely for responsibility for property.

Temporary absence, therefore, by such an officer, without turning over the public property, or being relieved of his responsibility for it, should not deprive him of this allowance.

By temporary absence, is understood an absence not exceeding one month.—*Vol. 15, p. 262.*

39. Except in case of organized companies, no pay is allowed for the responsibility for arms and clothing, when the number of men is less than that of a full company.—*Vol. 13, p. 312.*

#### BREVET PAY.

40. Officers of the army, holding brevet commissions, are entitled to receive the pay and emoluments of their brevet rank when on duty and having a command according to such brevet rank, and at no other time.—*Vol. 14, p. 187, 276.*

41. To authorize the allowance of brevet pay, the officer must not only have

a proper command, but must be on duty. He cannot, therefore, receive it when on leave of absence, though leaving and returning to a command appropriate to his brevet rank.—*Vol. 15, 262-3.*

42. Brevet officers are not entitled to pay according to their brevet rank while serving on a court martial.—*Dec. Sec. Compt. May 28th, 1841.*

43. A brevet colonel commanding an unorganized body of recruits, equal in number to a regiment, is entitled to the pay of his brevet rank.

Organization generally determines to what grade a command belongs; but where no organization exists, its number must determine its character.—*Vol. 15, p. 194.*

44. A captain and brevet major was assigned to duty as acting field officer of a regiment. Subsequent to the exercise of this command, he received a brevet as lieutenant colonel, to take effect from a date anterior to it. Held, that he was entitled to the brevet pay of major only, and not of lieutenant colonel.

The command of an acting field officer is not necessarily other than that of major. And as the brevet of lieutenant colonel was not conferred till afterwards, it cannot be regarded as the intention of the order to assign him to a command as such; especially as the regiment, in this instance, consisted of only six companies.—*Vol. 15, p. 197.*

45. A captain and brevet major of artillery, in command of two companies of light artillery, is entitled to brevet pay as major of artillery only, and not as major of cavalry. The act of March 3, 1837, allows cavalry pay to the company officers only of light artillery, and not to field officers commanding those companies.—*Vol. 15, p. 39.*

46. A brevet officer of the ordnance corps in command of an arsenal, is not considered as being "on duty, and having a command according to his rank," unless he is expressly recognized by the War Department as having such command.—*Vol. 13, p. 211.*

47. The duty of inspector-general of the army is not a command, and cannot therefore authorize the allowance of brevet pay.—*Vol. 15, p. 283; Vol. 14, p. 187.*

48. The performance of duty as assistant adjutant general, by a brevet lieutenant colonel, is not a command according to his brevet rank, and does not entitle him to brevet pay.—*Vol. 14, p. 405.*

49. A brevet brigadier-general, in command of a Military Department, is not thereby entitled to receive brevet pay, unless the force under his command is equal to a brigade.—*Vol. 14, p. 304.*

50. The pay of lieutenant colonel in the line of the army can be received under a brevet commission, in three instances only: First, when the officer is on duty, and acting as colonel or lieutenant colonel of a regiment. Second, when he is on duty, and commanding not less than four organized companies. Third, when he is on duty, and commanding an unorganized force not less in number than the aggregate of four companies, according to the legal organization of the corps to which he or they belong; or a number of organized companies, less than four and a sufficient unorganized force to make up the difference.—*Vol. 15, p. 438.*

# OFFICERS' APPLICATION FOR PAY.

Dr. **The United States, to**

ON WHAT ACCOUNT.		COMMENCEMENT AND EXPIRATION.		TERM OF SERVICE CHARGED.		PAY PER MONTH.		AMOUNT.		REMARKS.
From	To	Months.	Days.	Dollars.	Cents.	Dollars.	Cts.			
<b>PAY—For myself</b> ..... <i>Assist. company of subsistence</i> ..... <i>For commanding company</i> ..... <i>For private serv't (not soldier)</i> ..... <b>FORAGE—For horses</b> ..... <b>CLOTHING—For private servant</b> ..... <i>(not soldier)</i> .....		13	18							
<b>SUBSISTENCE—For myself, ( years' service)</b> ..... <i>Double rations com'd'g.</i> ..... <b>For private serv't (not soldier)</b> .....										

DESCRIPTION OF SERVANT.				PAY.			
NAME.	COMPLEXION.	HEIGHT.		EYES.	HAIR.	SUBSISTENCE.	
		FT.	IN.			FORAGE	CLOTHING
				Amount .. \$			

I CERTIFY, That the foregoing account is accurate and just; that I have not received pay, nor drawn rations, forage, or clothing, in kind, or received money in lieu of any part thereof, for any part of the time herein charged; that I actually owned and kept in service the horse, and employed the private servant for the whole of the time charged; that I did not, during the term so charged, or any part thereof, keep or employ as waiter or servant, soldier from the line of the army, that the annexed is a description of my servant; that for the whole period charged for my staff appointment, I actually and legally held the appointment; that I actually performed the duty of assistant commissary of subsistence during the whole time for which pay as such is charged; that I commanded a company during the whole time for which extra time of such charge; that I was the actual and only commanding officer at the double ration post charged for, which was garrisoned by at least one company of troops; that I was on duty, and have had a command according to my brevet rank, agreeably to law and regulation, during the whole time brevet pay is charged, that no officer, within my knowledge, has a right to claim, or does claim, for said services, for any part of the period charged, that I am not in arrears with the United States, on any account whatsoever; and that I was last paid by this paymaster, and to include the last day of

18      , 18      , the sum of

100 dollars, being the amount in full of said account.      *Duplicate.*



# **OFFICERS' APPLICATION FOR ARREARS OF PAY AND ALLOWANCES.** **FOR OFFICERS NOT IN SERVICE**

**Dr.** The United States, to ..... (Captain) of the ..... Regiment of .....  
**Dr.** The United States, to ..... (Captain) of the ..... Regiment of .....  
**Dr.** The United States, to ..... (Captain) of the ..... Regiment of .....

ON WHAT ACCOUNT.	COMMENCEMENT AND EXPIRATION.		TERM OF SERVICE CHARGED.		PAY PER MONTH.		AMOUNT.	REMARKS.
	From	To	Months.	Days.	Dollars.	Cents.		
PAY—For myself..... Assist. commissary of subsistence..... For commanding Company..... For private servant (not soldier)..... FORAGE—for horses..... CLOTHING—for private servant (not soldier).....	13	18						
SUBSISTENCE—for myself, (years' service)..... Double rations comd'g..... For private servt. (not soldier).....								

DESCRIPTION OF SERVANT.			
NAME.	COM. PLEXION	HEIGHT. Feet. Inches	HAIR.

**BE IT REMEMBERED,** That on this ..... day of ..... Anno Domini one thousand eight hundred and ..... personally appeared before me the subscriber, ..... and made oath on the Holy Evangelists of Almighty God, in due form, that the foregoing account, amounting to ..... dollars and ..... cents, is accurate and just; that he has not received pay, drawn rations or forage, or clothing in kind, or received money in lieu thereof, for or during any part of the time therein charged; that he actually owned and kept in service the horses, and employed the servant charged for, the whole of the time charged; and that he did not during the term so charged, or any part thereof, keep or employ as waiter or servant, soldier from the line of the army; that his place of residence is ..... and that he is not indebted or accountable to the United States on account of bounties or premiums, pay, contingencies, arms or accoutrements, ammunition, stores, clothing, camp equipage, medicine, or medical instruments, or any other account whatsoever; and that he has no unsettled accounts with the United States other than the above.

*Sworn to, this day and year above written, before me,* .....

NOTE. The usual clerk's certificate as to the official character of the Justice should be annexed.

## DECISIONS OF THE SECOND COMPTROLLER. SOLDIER'S PAY.

1. Privates in the army enlisted for five years prior to March 2d, 1833, were entitled to full pay of \$6 per month after they had served the two first years of their enlistment; and to receive such retained pay, if any, as had accrued under the 2d section of the act of March 2, 1833, provided they had served honestly and faithfully during that portion of the term of their enlistment.—*Vol. 5, p. 139.*

2. No crime except desertion forfeits the pay of a soldier, except upon sentence of a court-martial, unless, in consequence of the crime, the soldier is withdrawn from service.—*Vol. 15, p. 448.*

3. In all cases of claims for pay by discharged non-commissioned officers or soldiers, the duplicate certificate of enlistment, service, etc., as prescribed in the regulations of the Pay Department, must be produced.—*Vol. 12, pp. 358, 360.*

4. When a soldier, who was discharged on the expiration of his term of service, claims pay and clothing, his name not appearing on the regimental pay roll for the time embraced in his claim, the accounting officers will require the production of the descriptive certificate of his discharge, as the surest evidence that the claim has not been paid by the paymaster.

5. When the witnesses required by the regulations, to payments made to soldiers cannot be had, other satisfactory proof of the signature may be received.—*Vol. 14, p. 50.*

6. A receipt by mark, witnessed by two paymasters' clerks, is a substantial compliance with the regulation.—*Vol. 14, p. 75.*

7. When a soldier is discharged, and his account settled and paid by a paymaster, the payment purporting to be in full, that payment is to be considered final, unless shown by conclusive testimony to have been erroneous.—*Jno. A. Powell's case, January, 1848.*

8. When from the situation of his company, or the nature of the service, a soldier cannot receive his discharge when his term expires, and is from necessity retained in service, he is to be paid up to the time of his actual discharge.—*Vol. 6, p. 149.*

9. A soldier discharged on habeas corpus as a minor, forfeits all pay and allowances previously due, both by the Regulations of the Army, and general principles.—*Vol. 15, p. 38.*

10. When an officer or soldier is furloughed, in anticipation of his discharge or the expiration of his term of service, he cannot claim for the balance of his term both his travel pay and his pay as in service.—*Lieut. Fellnagle's case, and W. S. Thompson's case, Oct. 19, 1848.*

11. A soldier, who is taken prisoner by the enemy, is entitled to his pay and allowance during the time he is detained, and to traveling allowance from the place where he is released to his home. Volunteers however, are not, under such circumstances, entitled to compensation for use and risk of horses.—*Vol. 12, p. 429.*

12. A private soldier of militia or volunteers, who is illegally and against his will discharged from service, is entitled to his pay up to the time of the discharge of the company to which he belonged, or to the expiration of his term of enlistment.—*W. C. Hayne's case, June 16, 1849.*

13. A soldier under arrest by the civil authority on a criminal charge, will be entitled to his pay for the time he was in custody, provided he is tried and acquitted, or discharged without trial.—*Case of Dennis Clary, Jan. 8, 1844.*

14. There is no law or regulation under which a private soldier can be allowed the pay of a lieutenant for the performance of duty in the Subsistence Department.—*Vol. 12, p. 302.*

15. The regiment of mounted riflemen, raised under the act of May 19, 1846, which gives the President no authority to convert the regiment into one of infantry, is entitled to dragoon pay even before the men were mounted.—*Dec. Sec. Compt., Sept. 23, 1846.*

16. Subsequent to the act of March 2, 1833, a paymaster's clerk, if a first ser-

geant, is entitled to \$30; if a sergeant merely, \$24; and if a corporal, to \$16 per month.—*Vol. 8, p. 506.*

17. Men enlisted to serve as dragoons, are not entitled to any bounty. Those only who are "enlisted to serve in the artillery and infantry" are entitled to bounty, under the 2d section of the act of January 12, 1847. This decision does not apply to the enlistments for the 3d regiment of dragoons.—*See act of March 3d, 1847, chap. 61, sec. 45. Dec. Sec. Compt., Feb. 2, 1848.*

18. The 17th section of the act of March 3, 1847, chap. 61, gives the private soldier who has received a certificate of merit, the \$2 per month additional pay allowed by said act, during the residue of his service under the enlistment by which he is held at the time of granting the certificate, although he may have been subsequently appointed a non-commissioned officer.—*Vol. 12, p. 375.*

19. Discharged soldiers are not entitled to the increased allowance given by the act of Sept. 28, 1850, as traveling pay, the act allowing them the extra pay only when *serving* in Oregon and California, and not after a discharge from service. Nor is an apprehended deserter, whose period of service would have expired prior to July 1, 1850, and who receives an honorable discharge, entitled to the increased pay while making up time lost by desertion.—*Vol. 14, pp. 211-12.*

20. There is no grade of armorer in the line of the Army. But when a man mustered as such, performed the duties of farrier and blacksmith, he may receive the pay of that grade.—*Vol. 15, p. 393.*

21. A person borne on the rolls of a regiment as hospital steward, and mustered and paid as such, cannot subsequently be allowed pay as acting assistant surgeon.—*Vol. 15, p. 364.*

22. When a soldier has drawn clothing in advance, but no more than he was entitled to at the time of the issue, and is subsequently discharged under circumstances in which no fault can be imputed to him, no deduction is to be made from his pay on account of the clothing received.

23. A soldier of a volunteer company in the Mexican war, illegally and against his will, discharged by a Regimental Court-Martial, from service and his pay ordered to be paid to the commanding officer of the company without a compliance on the part of the discharging authority with the articles of war, is legally entitled to his pay as a soldier up to the time when his company was discharged.

#### RETAINED PAY.

24. Under the law of January 12, 1847, a recruit cannot claim his retained bounty until he shall have joined for duty the regiment in which he is to serve; but if the government, by disbanding him, put it out of his power to join his regiment, the retained bounty should be paid him.—*Dec. Sec. Compt., May 14, 1847.*

25. A soldier who is sentenced by a court-martial to forfeit a month's pay, does not thereby forfeit his retained pay.—*Dec. Sec. Compt., Oct. 11, 1843.*

26. A soldier re-enlisting before the expiration of his first term of service, is entitled to his retained pay for that term of service to the time of re-enlistment only.—*Vol. 10, p. 321.*

27. When a soldier dies before the expiration of his term of service, or is discharged upon a surgeon's certificate, the retained pay may be claimed.—*Vol. 11, p. 206.*

28. When a soldier is slain in battle or disqualified for further duty, by reason of wounds received or other inability brought on in the service, the Government has no right either in law or equity to withhold the retained pay.—*Vol. 6, p. 150, Vol. 5, p. 573.*

29. When a soldier is *dishonorably* discharged before the expiration of his term of enlistment, without any cause being assigned, the paymaster will withhold the retained pay until the cause of discharge is ascertained, and then refer the subject to the Paymaster General, if necessary.—*Dec. Sec. Compt., February, 1846.*

30. When a soldier is discharged from service by reason of his own miscon-

duct. his retained pay is thereby forfeited, and no part of it can be paid to the sutler or laundress.—*Dec. Sec. Compt., Sept. 6, 1843.*

31. A soldier discharged for "*utter worthlessness*," before the expiration of his term of service, is not entitled to his retained pay.—*Vol. 11, pp. 204, 207, 211.*

32. A soldier who is discharged before the expiration of his term of service, on procuring a substitute, is not entitled to the retained pay. The bounty land and retained pay go to the substitute.—*Dec. Sec. Compt., March 13, 1844.*

33. The retained bounty under law of January 12, 1847, cannot be paid to a recruit, no matter how long he may have served, unless he has "joined for duty the regiment in which he is to serve," unless the United States put it out of his power to do so, by disbanding him, in which case he is entitled.

34. A soldier who deserts, or is discharged as a minor, is not entitled to the retained pay, as it does not constitute any part of the arrearages of pay due at the time of his desertion or dismissal.

35. Money due a minor can only be drawn by a parent. A guardian can, after taking out letters and sending proper certificate of his authority.

### APPLICATION OF SOLDIER FOR ARREARS OF PAY.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT REMEMBERED, That on this..... day of....., A.D. one thousand eight hundred and fifty...., personally appeared before me, the subscriber, a Justice of the Peace,....., and made oath in due form of law, that he is not indebted or accountable to the United States on any account whatever; and he further states that he is the identical..... who was a..... in the company of....., commanded by Captain....., in the regiment commanded by Colonel.....; that he enlisted at....., on the..... day of....., 184...; and was honorably discharged at....., on the..... day of....., 184... on account of.....; and that he claims that there is due him from the United States, for pay and allowances, as follows:..... the same never having been received by him from the United States, or any of its officers.

And further, that he hereby appoints....., his attorney, and authorizes him to receive and receipt for a certificate for whatever sum may be allowed on the same, and to attend to, and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....

WITNESS :.....

AND I HEREBY CERTIFY, That at the same time, personally appeared before me,....., and....., known to me to be two credible witnesses, and who, being duly sworn, depose and say, each for himself, that the above named....., now present, is, to their knowledge, the identical person named in the above deposition, and that the said affidavit is correct. as they verily believe; that they are acquainted with the said....., and that they are, each, wholly disinterested.

WITNESS :.....

SUBSCRIBED AND SWORN TO, before me, }  
upon the day and year first above written. }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, That ....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was at the time of so doing, a ....., in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... County Court, (a Court of Record,) this..... day of....., A.D. 185..

....., Clerk.

### DECEASED OFFICERS' AND SOLDIERS' PAY.

Claims on account of military services rendered by *deceased* officers and soldiers, whether regulars or volunteers, should be prepared in conformity with the following rules:—

ORDER OF CLAIM.—“Where letters testamentary or of administration are legally granted, such legal representative will have preference. Payments will not be made to administrators unless they are heirs, or are authorized by heirs to administer, or are creditors, and then only to the authenticated amount of their claim; and even in cases of administration, they must be accompanied with proof of the heirs entitled.

If the deceased died unmarried, payment will be made, first, to the father; second, to the mother; third, to the brothers and sisters collectively; and lastly, to the heirs general; each class claiming where those preceding are dead.

If the deceased had been married, then the following will be the order of claim: first, the widow; second, the child or children, (if minors, the guardian); third, the father; fourth, the mother; fifth, the brothers and sisters collectively; and lastly, the heirs general.

PROOF AND AUTHENTICATION.—To satisfy the accounting officers that the person claiming is entitled to the money, the depositions of two witnesses must be procured, to be taken before a judge or justice of the peace, (who shall certify to their *credibility*,) that the person so claiming is the widow or child, etc., of the deceased; and if it be a child, that it is of age, and the only child; or if it be a brother or sister, or general heir, that the deceased left no other brother or sis-

ter, or general heir, and that the claimant is of lawful age; and said deponents shall make oath that they are disinterested. If the deceased left no widow, child, or parent, it must in all cases be so stated in the depositions.

The certificate of the clerk of the court to which said judge or justice belongs, accompanied by the seal of his office, if he has one, and if not, by a certificate of the fact, must be annexed to said deposition.

Where letters testamentary or of administration are forwarded, they must be proven to be true copies by the clerk of the court or officer granting them, with the seal annexed, as above, or its absence accounted for.

**MODE OF PAYMENT.**—Payments will be made by an order from the accounting officers on the paymaster most convenient to the residence of the claimant. Such order will command the money at par in almost every town in the United States. Such order will require the signature of the claimant on its face before it will be paid."

## DECISIONS OF SECOND COMPTROLLER.

### DECEASED CLAIMANTS.

[The references are to the volume and page of the books, containing decisions, in the office.]

1. In order to show that the person claiming money due a deceased person from the United States, has a legal right to receive it, he should produce and file with the disbursing officer making the payment, the original letter of administration, or a copy thereof duly certified, or an official certificate from the clerk of the court from which it issued, that it appears by the records of said court that he has been duly appointed, and is legally empowered to act as administrator on the deceased person's estate.—*Vol. 12, p. 184.*

2. Where the balance due a deceased person is paid to an administrator deriving his authority from a court of competent jurisdiction, though obtained by fraudulent means, payment will not be made again when claimed by the true representative of the deceased. But where payment is made to an administrator whose authority is derived from a court possessing no power to grant administration, the legal representatives of the deceased have a valid claim on the government for the money. When the jurisdiction of the court granting the power is denied, and the question is one of fact merely, such as the residence of the deceased, etc., the most conclusive evidence of the want of jurisdiction will be required.—*Philip Robinson's case, April 10, 1851.*

3. In the case of a gratuity granted by act of Congress to the relatives of deceased persons, the collateral relatives, whether of the whole or half blood, should participate equally, in the order pointed out in the act.—*Dec. Sec. Compt., Nov. 19, 1830.*

4. When the amount due from the United States to a deceased person has been paid to one claiming to be the only brother of the deceased, upon proof that was then deemed satisfactory that he was the only brother, and that there was no widow, and another claim for the money is presented by a person claiming to be the widow, the clearest evidence should be required of the fraud and

perjury of the proof on which payment was made, of the absence of all knowledge of it on the part of the second claimant, and of her right as the widow, before the money is paid again.—*Vol. 15, pp. 11, 173.*

5. Questions as to the right of the whole or half blood to inherit balances due deceased persons, will be determined in conformity with the law of the State of which the deceased was a citizen.—*Sergeant W. C. Baker's case, 22d September, 1849.*

6. The government do not recognize an administrator appointed without the consent of the heirs of the deceased.—*Vol. 3, p. 37.*

7. Where arrearages are claimed by an executor, for the benefit of others, either the will should be probated in the county where the deceased lived, or those interested in the trust should signify their assent that the amount should be paid to the executor without probate of the will.—*Vol. 15, p. 73.*

8. Payment of an amount due a deceased person for articles purchased by the Navy Department, may be made to the guardian of the children of the deceased, where it appears by the certificate of the probate court, that the wards of the guardian are the sole heirs, and also that the debts of the deceased have been paid, and the estate closed by a settlement of the administrator's account; otherwise payment should be made to the administrator.—*Vol. 14, p. 206.*

9. Arrears due a deceased soldier may be paid without administration to the widow, child, father, mother, brothers, and sisters, but not to more remote heirs; and no after application for the benefit of creditors will be recognized.

10. Arrears of pay may be legally paid to the mother of a deceased soldier, he being an illegitimate son, leaving neither wife or child.

11. A soldier cannot, by a will, transfer his right to extra pay or land; but can his arrears of pay.

## FORM OF APPLICATION

FOR ARREARS OF PAY DUE A DECEASED OFFICER OR SOLDIER,  
BY WIDOWS, HEIRS, OR ADMINISTRATORS.

STATE OF..... }  
COUNTY OF..... } ss.

BE IT REMEMBERED, That on this..... day of..... A.D. one thousand eight hundred and fifty....., personally appeared before me, the subscriber..... and made oath in due form of law, and on his oath, states that he is the..... of..... who was a..... in the company commanded by Capt..... in the Regiment commanded by Col..... that he enlisted at..... on the..... day of..... 184.; and was honorably discharged at..... on the..... day of..... 184.; on account of..... Deponent claims that there is due from the United States on account of such service, as follows:.....

And further, that he hereby appoints,....., his attorney, and authorizes him to receive and receipt for a certificate for whatever sum may be allowed on the same, and to attend to, and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money, that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....

WITNESS :.....

AND I HEREBY CERTIFY, that at the same time, personally appeared before me..... and....., known to me to be two credible witnesses, and who, being duly sworn, depose and say, each for himself, that the above named..... is.....

(Here state in what manner the claimant represents the deceased.)

now present, is to their knowledge, the identical person named in the above deposition, and that the said affidavit is correct, as they verily believe; that

they are acquainted with the said..... and that they are, each wholly disinterested.

WITNESS :.....

SUBSCRIBED AND SWORN TO, before me, }  
upon the day and year first above written. }  
....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, That....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was at the time of so doing, a..... in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... County Court, (a Court of Record,) this..... day of..... A.D., 185....., Clerk.

## DECISIONS OF SECOND COMPTROLLER.

### TRAVEL-PAY OF OFFICERS.

[The references are to the volume and page of the books, containing decisions, in the office.]

1. No expenses of transportation of officers on recruiting service will be admitted, that do not arise from orders emanating from general head-quarters, except they be required to visit branch or auxiliary rendezvous under their charge, when they will be allowed the actual expenses incurred.—*Vol. 14, p. 190.*

2. The traveling allowance to officers who travel without special instructions from their superiors, but upon duty which conveys the general authority, or imposes the necessity for travel, are the actual expenses of transportation and portage, as provided for by the 5th paragraph of the Regulations of the War Department of the 5th March, 1844, and no more.—*Vol. 11, p. 135.*

3. An officer of the Army who hires a wagon at the expense of the Government to transport him upon a journey, is not entitled to traveling allowance for such journey.

4. Traveling expenses are not allowed unless the journey was performed by direction of the proper authority.—*Vol. 11, p. 422.*

5. Expenses of a journey by an officer of the Army or Navy, without orders, for the purpose of settling his accounts at the Treasury, will never be allowed, except upon a certificate from the hand of one of the officers through which the accounts passed, that his attendance was by him regarded as necessary.—*Vol. 15, p. 370.*

6. The rule in stating accounts for traveling expenses incurred under orders, is to allow for the distances fixed by the Post Office Department, "on the route usually traveled," or the "shortest mail route," as the case may be. And this rule applies to all officers and persons who travel at the public expense in any branch of the public service.—*Vol. 14, p. 347.*

7. The "shortest mail route" is the legal standard in calculating payments for travel performed by officers on duty.—*Vol. 11, pp. 15, 186.*

8. Officers ordered with men to attend civil courts as witnesses, in virtue of subpoenas or orders from superior officers, are entitled to an allowance for transportation of baggage; the men not being considered a *detachment* in the military sense of the term.—*Capt. A. R. Hetzel's case, 1837.*

9. By article 77, par. 984, of General Regulations for the Army, of 1841, a general or field officer, when traveling on duty without troops, will be entitled to transportation for one servant, at the rate of eight cents per mile, on certifying that the servant actually accompanied him on his journey.—*Vol. 9, p. 633.*

10. An officer performing a journey under circumstances which entitle him to traveling allowance, may travel by private conveyance, and charge what the



journey would have cost him by the usual conveyance.—*Lieut. Martin's case, October 10, 1842.*

11. The transportation of regular officers must be computed by the "*shortest mail route*;" that is, the shortest route by which the mail is actually transported between the points of computation—not the shortest line that could be drawn between the points passing over local mail routes. This rule, like all others, must have its exceptions. Where the mail route happens to be unusually circuitous, and there is a shorter and *usually traveled* route, the latter should be adopted.

But where the shortest *actual* mail route is also the usually traveled route, that must be adopted. The distance should be computed upon the routes existing when the journey is made.—*Vol. 15, p. 194.*

12. Where an officer's claim for transportation has been settled, and has so remained, without objection by him, for a year, an additional claim, on the ground of an under estimate of the distance traveled, will not be entertained at the treasury.—*Vol. 15, p. 226.*

13. The transportation of officers' families at the public expense is entirely unauthorized by law: nor has any person authority to enter into a contract with an officer for the payment of the passage money of his family, either in a transport vessel or otherwise, upon condition that he relinquish his rations or other allowances during the period of the voyage.—*Vol. 15, p. 252.*

14. The Mormon battalion of volunteers was mustered into service at Council Bluffs, in Iowa, marched to Mexico by the overland route, and was discharged at Los Angeles, in California, in July, 1847. A small portion of the battalion returned across the country, and others by way of Panama. The latter was the usually traveled route, the former being practicable to armed parties only. No mail route then existed.

The act of June 17, 1846, requiring their traveling allowance home to be computed by the "*most direct route*," it was held (and this decision was confirmed by the Attorney General) that the allowance should be computed by the overland route.—*Vol. 15, p. 127.*

15. The Regulations of March 5th, 1844, allow only seven cents per mile to officers traveling on court-martial service.—*Dec. Sec. Compt., 1846.*

16. On the discharge of a regiment of volunteers, the officers are not allowed traveling pay to any other State or territory than that in which the regiment was raised, and where they received their appointments.—*Vol. 14, p. 308.*

#### OFFICERS' TRAVEL-PAY.

17. Constructive transportation of a servant can in no case be allowed. Officers of the Volunteer Regiments, raised for service in the Mexican War, are subject to the same rule on this subject that is applied to those of the regular army.—*Vol. 15, p. 298.*

18. The traveling expenses of an officer, incurred by him in performing a journey in pursuance of an order received while he is on furlough, cannot be allowed by the accounting officers.—*Vol. 11, p. 138.*

19. Officers on leave of absence must return to their duty, wherever that may be, without expense to the Government. Orders given for their return to duty are not to be construed as to entitle them to transportation.—*Vol. 15, p. 142.*

20. An officer traveling under orders to attend a Court Martial, and taken sick, is entitled to his per diem allowance for the time he was detained by sickness.

21. A volunteer officer who voluntarily left the service, and not in consequence of sickness, is not entitled to travel-pay home.

#### FORM OF APPLICATION.

Officers claiming for mileage for traveling under orders, should annex the order under which the journey was performed to their account.

Officers claiming *return travel-pay* from place of discharge

to their residence, should make an account in the same form as that for arrears of pay, etc., on page 360, charging at the rate of one day's pay and allowances, for each twenty miles travel by the nearest mail route; to which should be annexed the following affidavit and proof of identity:

STATE OF..... }  
COUNTY OF..... } ss.

BE IT REMEMBERED, That on this..... day of....., A.D. one thousand eight hundred and fifty....., personally appeared before me, the subscriber,....., and made oath in due form of law, and on his oath, states that the within account, amounting to..... dollars, and..... cents, is accurate and just; that he has not received pay, drawn rations or forage, or clothing in kind, or received transportation, or a certificate upon which he has drawn transportation himself, or upon which any other person, in his name or otherwise, has drawn transportation or money in lieu thereof, for or during any part of the time therein charged, or claimed; that he actually owned and kept in service the horses, and employed the servant charged for, the whole of the time charged, and that he did not, during the time so charged, or any part thereof, keep or employ as waiter or servant, a soldier from the line of the army; that his place of residence, at the time of his discharge, was....., and now is at....., and that he is not indebted or accountable to the United States on account of bounties or premiums, pay, contingencies, arms or accoutrements, ammunition, stores, clothing, camp equipage, medicines or medical instruments, or on any other account whatever; and he further states that he is the identical..... who was a..... in the company of....., commanded by Capt....., in the Regiment commanded by Col....., that he *enlisted* at....., on the..... day of....., 184.; and was honorably discharged at....., on the..... day of....., 184.; on account of....., and that the within account is for his traveling pay and allowances, from the place of his discharge, to the place of his residence, a distance as he believes of..... miles.

And further, that he hereby appoints....., his attorney, and authorizes him to receive and receipt for a draft or certificate for the amount of this account, or whatever sum may be allowed on the same, and to attend to, and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money, that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....

AND I HEREBY CERTIFY, that at the same time, personally appeared before me..... and....., known to me, to be two credible witnesses, and who being duly sworn, depose and say, each for himself, that the above named....., now present, is, to their knowledge, the identical person named in the above deposition, and that the said affidavit is correct, as they verily believe; that they are acquainted with the said....., and that they are, each, wholly disinterested.

SUBSCRIBED AND SWORN TO, before me, upon }  
the day and year first above written. }

....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I CERTIFY, that....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was, at the time of so doing, a..... in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... County Court, (a Court of Record,) this..... day of....., A.D. 18....

....., Clerk.

## SOLDIER'S TRAVEL-PAY, OR MILEAGE.

The act approved March 3, 1799, provides, "That whenever any officer or soldier shall be discharged from the service, except by way of punishment for an offense, he shall be allowed his pay and rations, or an equivalent in money, for such term of time as shall be sufficient to travel from the place where he receives his discharge to the place of his residence, computing at the rate of twenty miles to a day."

Section 24 of the act of March 16, 1802; section 22 of the act of January 11, 1812, and section 15, of the act of January 29, 1813, re-enact the above.

The act of June 18, 1846, entitled "an act supplemental to the act entitled 'An act providing for the prosecution of the existing war between the United States and the Republic of Mexico,' and for other purposes," provides (sec. 10,) "That the non-commissioned officers, musicians, and privates of volunteers and militia, when called into the service of the United States, shall be entitled to receive fifty cents, in lieu of subsistence, and twenty-five cents in lieu of forage for such as are mounted, for every twenty miles, by the most direct route, from the period of leaving their homes, to the place of general rendezvous, and from the place of discharge back to their homes."

## DECISIONS OF SECOND COMPTROLLER.

[The references are to the volume and page of the books, containing decisions, in the office.]

1. A soldier, when honorably discharged from service, is allowed his pay and rations for such term of time as shall be sufficient for him to travel from the place of discharge to the place of his residence, computing at the rate of twenty miles to a day.

The place of enlistment is usually considered the place of residence, within the meaning of the law. But if the soldier is enlisted in an enemy's country, and brought back to the United States and discharged, his traveling allowance will be computed from the place of his discharge to his home or place of actual residence.—*Vol. 14, p. 35.*

2. A soldier discharged under such circumstances as entitled him to the benefit of the provisions of the 15th section of the act of January 29, 1813, is entitled to his traveling allowances, under said act, from the place where he was when the discharge took effect to the place of his residence.—*Vol. 12, p. 34.*

3. A soldier or marine who re-enlists under the act of March 2, 1833, is entitled to his transportation to his home or the place of his enlistment.—*Vol. 7, p. 413.*

4. A soldier who is discharged for the purpose of being employed as a teamster in the Quartermaster's Department, is legally entitled to traveling allowances under the 15th section of the act of January 29, 1813.—*Dec. Sec. Compt., May 15, 1850.*

5. A soldier who, at the time of his discharge from service, is in custody of the civil authority, and under sentence of imprisonment, is not entitled to receive traveling allowance.—*Vol. 15, p. 299.*

6. A soldier who was discharged in Mexico, and died on his passage home, was entitled to his traveling allowance at the moment of his discharge. His representatives, therefore, have a legal claim to it.—*Dec. Sec. Compt., April 20, 1849.*

7. Under the act of May 13, 1846, volunteers are entitled, for their travel to the place of rendezvous, to one day's pay and subsistence for every twenty miles travel from their place of residence; and all mounted privates, non-commissioned officers, musicians, and artificers are entitled, in addition, to forty cents per day for the use and risk of their horses, and the legal allowance for forage.—*Vol. 11, p. 267.*

8. A soldier of volunteers or militia, who, from sickness or other proper cause, cannot avail himself of government transportation, or march with his company, is entitled to his travel-pay, from the place where he may rightfully be when his company is discharged, to his place of residence.—*B. T. Merston's case, June 27, 1848.*

9. Volunteers originally called into service for six months, and who, on the expiration of their term of service, were re-mustered for a second term, are not entitled to traveling pay and rations for each term to the place of their original organization or residence; no pay for constructive journeys home is allowed.—*Vol. 14, p. 228.*

10. When an officer or soldier is furloughed before the expiration of his time of service, he cannot receive, for the balance of his time, both his traveling pay and his pay as in service.—*Vol. 12, p. 363.*

11. A soldier on receiving and accepting a commission as a company officer, is entitled to the traveling allowance provided for by the 15th section of the act of January 29, 1813.—*Vol. 12, p. 334.*

## EXTRA PAY.

### EXTRA PAY FOR SERVICES IN THE WAR OF 1812.

AN ACT for completing the existing military establishment.

APPROVED, DECEMBER 24, 1811.

SEC. 2. *And be it further enacted,* That there be allowed and paid to each effective, able-bodied man, recruited or re-enlisted for that service, for the term of five years, unless sooner discharged, the sum of sixteen dollars; but the payment of one-half of the said bounty shall be deferred, until he shall be mustered and have joined the corps in which he is to serve; and whenever any non-commissioned officer or soldier shall be discharged from the service, who shall have obtained from the commanding officer of his company, battalion, or regiment, a certificate that he had faithfully performed his duty whilst in service, he shall, moreover, be allowed and paid, in addition to the aforesaid bounty, three months' pay, and one hundred and sixty acres of land:\* and the heirs and representatives of those non-commissioned officers or soldiers, who may be killed in action, or die in the service of the

\* Allowance of bounty land increased to 320 acres, to all subsequent enlistments by the act of December 10th, 1814; see Bounty Land Laws.

United States, shall, likewise, be paid and allowed the said additional bounty of three months' pay, and one hundred and sixty acres of land, to be designated, surveyed, and laid off, at the public expense, in such manner, and upon such terms and conditions, as may be provided by law.

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The 12th section of the act of January 11, 1812, entitled, "Act to raise an additional military force," re-enacts the preceding section of the act of December 24, 1811.

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AN ACT making further provision for filling the ranks of the regular army, encouraging enlistments, and authorizing the re-enlistments, for longer periods, of men whose term of service are about to expire.

APPROVED, JANUARY 27, 1814.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* in order to complete the present military establishment to the full number authorized by law, with the greatest possible dispatch, there shall be paid, to each effective, able-bodied man who shall, after the first day of February next, be enlisted into the army of the United States, to serve for the term of five years or during the war, at his election, in lieu of the bounty in money, and of the three months' pay at the expiration of the service now allowed by law, the sum of one hundred and twenty-four dollars; fifty dollars of which to be paid at the time the recruit is enlisted, fifty dollars when he shall be mustered and have joined some military corps for service, and twenty-four dollars when he shall be discharged from service; and the wife and children, and, if he leaves no wife or children, the parents of such non-commissioned officer and soldier, enlisted as hereinbefore stated, who may be killed in action, or die in the service of the United States, shall be allowed and paid the sum of twenty-four dollars; and after the said first day of February next so much of the fourth section of the act entitled "An act for the more perfect organization of the army of the United States," passed the twentieth day of January, one thousand eight hundred and thirteen, as allows to each able-bodied man enlisted into the service of the United States, in the manner therein stated, an advance of twenty-four dollars on account of his pay, shall be and the same is hereby repealed.

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Claims for extra pay on account of services in the war of 1812, under the preceding acts, should be presented to the

*Third Auditor of the Treasury.* The form of application for *arrears of pay*, due deceased soldiers of the same war, may be used for the purpose.

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### THREE MONTHS' EXTRA PAY.—MEXICAN WAR.

AN ACT to amend an act entitled "An act supplemental to an act entitled 'An act providing for the prosecution of the existing war between the United States and the Republic of Mexico,'" and for other purposes.

APPROVED, JULY 19, 1848.

SEC. 5. *And be it further enacted*, That the officers, non-commissioned officers, musicians, and privates engaged in the military service of the United States in the war with Mexico, and who have served out the term of their engagement, or have been or may be honorably discharged; and first to the widows, second to the children, third to the parents, and fourth to the brothers and sisters of such who have been killed in the battle, or who died in service, or who having been honorably discharged, have since died, or may hereafter die, without receiving the three months' pay herein provided for, shall be entitled to receive three months' extra pay: *Provided*, That this provision of this fifth section shall only apply to those who have been in actual service during the war.

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A RESOLUTION for the speedy payment of the three months' extra pay to the officers, non-commissioned officers, musicians and privates who have served in the late war with Mexico, allowed by the act of July nineteenth, eighteen hundred and forty-eight:

APPROVED, JULY 29, 1848.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled*, That the three months' extra pay, provided by the fifth section of the act approved July nineteenth, eighteen hundred and forty-eight, to the officers, non-commissioned officers, musicians and privates, who have been in actual service, in the late war with Mexico, and who have served out the term of their engagement, or have been honorably discharged, and to the widows or heirs of those who have died, or been killed in the service, shall be paid and settled by the Pay Department of the army, under such regulations as the Paymaster General, with the approval of the Secretary of War, shall establish.

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The following letter, from the Secretary of War, gives his construction of the law above referred to, which governs in the settlement of all claims under the law:

WAR DEPARTMENT,  
*Washington, August 3, 1848.* }

SIR : In reply to your interrogatories in relation to the construction to be given to the 5th section of the " Act to amend an act, entitled 'An act supplemental to an act entitled an act, providing for the prosecution of the existing war between the United States and the Republic of Mexico, and for other purposes ;' " passed the 19th ultimo, I present the following, as my views on the subject.

The proviso restricts the benefit of the section to those who have been in " actual service." Something more than a mere muster into service is undoubtedly required. Recruits who had not left the United States for the seat of war, or if they had left it, but had not joined their respective companies, are not entitled to the extra pay allowed by the fifth section of the act above referred to.

Volunteers, although mustered into service, if they were not marched or sent to the seat of war, or to positions where service was required of them, cannot be said to have been in actual service, and do not, therefore, come within the provision of the law for extra pay. This view of the law will exclude from extra pay the troops which were called out by General Gaines, and discharged before being sent to Mexico or Texas ; the troops organized under the call of Colonel Curtis, and discharged before they went to Mexico, or were not put on duty there ; and the regiment of volunteers, called for from Missouri in 1846, for Santa Fé, and discharged before being sent to that destination.

If an officer, non-commissioned officer, private, etc., after muster into service, has been discharged by reason of ill health incurred while in the service of the United States, he is entitled to the three months' extra pay. But where he has been discharged on his own application on any grounds which did not render him incapable of serving out the term of his engagement, he is not entitled to the benefit of the law, although an honorable discharge may have been given to him. Where a volunteer officer, wishing to retire from the service of the United States, has tendered the resignation of his commission, and it was not accepted in the form of a resignation, but he was discharged, he is not entitled to extra pay. Officers appointed by the President leave the service by the tender and acceptance of their resignations. Those receiving appointments from the Executive of the States, and received into the service of the United States, retire from it by discharge ; the former are not entitled to extra

pay, nor can it be the intention of the law to allow it to the latter where they were discharged before the term of their service had expired on their own application.

I am of opinion that, in all cases, where officers, non-commissioned officers, privates, etc., were actually mustered into service, and, while *en route* to the seat of war or the place assigned for actual service, have died or have been discharged in consequence of sickness incurred since being received into service, the right of extra pay attaches.

Lieut. Col. B. F. LARNED,  
*Acting Paymaster General.*

W. L. MARCY,  
*Secretary of War.*

A RESOLUTION for restoring the settlement of the "three months' extra pay" claims to the accounting officers of the Treasury.

APPROVED, JULY 29, 1850.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, the unsettled claims of the officers, non-commissioned officers, musicians, and privates, for three months' extra pay for services in the war with Mexico, as provided for by the fifth section of the act approved July nineteenth, eighteen hundred and forty-eight, chapter one hundred and four, which, by a joint resolution of Congress, approved July twenty-ninth, eighteen hundred and forty-eight, it was made the duty of the pay department of the army to settle under such regulations as the Paymaster General, with the approval of the Secretary of War, shall establish, be, and the same are hereby, directed to be settled by the second Auditor and certified by the second Comptroller of the treasury. That all muster and pay rolls, and all other papers relating to said claims on file in the Paymaster General's office, be transferred to the second Auditor's office, and that the settlements made by the pay department, under the joint resolution approved the twenty-ninth day of July, eighteen hundred and forty-eight, be considered as valid as if they had been made by the accounting officers of the Treasury.*

### DECISIONS OF SECOND COMPTROLLER.

[The references are to the volume and page of the books, containing decisions, in the office.]

1. By the Joint Resolution of July 29, 1848, claims for the three months' extra pay, provided for by the 5th section of the act of July 19, 1848, are to be settled by the Paymaster's Department of the army, under such regulations as the Paymaster General, with the approval of the Secretary of War, shall establish.—*Vol. 12, p. 347.*

2. On the discharge of a private soldier who is entitled to the three months' extra pay, under the act of July 19, 1848, and who, at the time of his discharge, was receiving the additional pay of \$2 per month on a certificate of merit, the



additional pay should be allowed as part of the three months' extra pay.—*Vol. 13, p. 272.*

3. A widow of a deceased soldier, intermarrying, is entitled to the three months' extra pay due her deceased husband, under the act of July 19, 1848, and her receipt may be taken as sufficient evidence of payment.—*Dec., Sept. 1849.*

4. The three months' extra pay provided for by the act of July 19, 1848, is a gratuity, and not, like a balance of wages, part of the assets of the soldier's estate, and belongs, by the terms of the law, first to the widow, secondly to the children, thirdly to the parents, and fourthly to the brothers and sisters.—*Scott's case, January 2, 1849.*

5. A carriage maker, who was required to do duty in the ranks with his corps, is entitled to receive a certificate of merit, under General Order No. 4, of January 24, 1849, and is entitled to the three months' extra pay, under act of July, 1848.—*Dec. Sec. Compt., September, 1849.*

6. Officers performing staff duty, in addition to their duty in the line, have been considered entitled to have included in the three months' extra pay, provided for by the act of March 3, 1815, the compensation of their staff rank. The same principle has been decided to be applicable in settling the accounts of officers discharged at the close of the Mexican War.—*Dec. Sec. Compt., Sept. 17, 1819.*

7. Officers of the line of the Army, entitled to three month's extra pay, who at the time of their discharge were receiving additional pay for performing staff duty, are entitled to have such compensations included in computing the extra pay.—*Vol. 13, p. 272.*

8. To entitle an officer who resigned his commission on account of ill health, before his term of service expired, to the three months' extra pay, under the act of July 2, 1819, it must appear that the ill health amounted to disability, was contracted in the service, and was assigned at the time as the cause of resignation.—*Vol. 15, p. 61.*

9. A soldier promoted to the rank of hospital steward, if doing duty as such at the time of his discharge from service, is entitled to the three months' extra pay in that capacity.—*Grimes' case, September, 1849.*

10. The act of July 19, 1848, granting three months' extra pay to soldiers who served in the war with Mexico, applies to those only who have joined their companies for service.—*Vol. 14, p. 295.*

11. Actual service in the Mexican war is necessary to entitle a soldier to the extra pay allowed by the act of July 19, 1848. Hence, service in the Army during the continuance of the war, but away from its seat, is not sufficient.—*Vol. 15, p. 382.*

12. A soldier who furnishes a substitute, and is discharged from service, is not entitled to the three months' extra pay or land bounty; the substitute is entitled to both.—*E. W. Burns' case, August, 1851.*

13. Surgeons who attended the volunteer regiments until Army surgeons reported for duty, have not been considered as officers of the Army, but civilians temporarily engaged, and consequently are not entitled to the three months' extra pay provided for by act of July 19, 1848.—*Vol. 14, p. 202.*

14. Surgeons who attended the volunteer regiments in the war with Mexico, as a part of their staff, but were not appointed by the President as provided by law, were not officers of the Army, and therefore not entitled to the three months' extra pay.—*Vol. 15, p. 171.*

15. Paymasters' clerks are not entitled to the three months' extra pay provided for by the act of July 19, 1848.—*Dec. Sec. Compt., Oct. 3, 1849.*

16. Officers of the Army, serving in volunteer corps under commissions from State authority, are not entitled to the extra pay allowed by the act of July 19, 1848.—*Vol. 14, p. 113.*

17. Officers voluntarily leaving the service by resignation, are not entitled to the three months' extra pay under the act of August 3, 1848.—*Vol. 14, p. 450.*

18. Marines who have served in the war with Mexico, are not entitled to the three months' additional pay allowed by law, unless they served with the army;

and this fact should be made to appear by endorsement on the discharge, or by a certificate from the commander of the corps, or by some other unquestionable evidence.—*Vol. 12, p. 313.*

19. An assistant surgeon, discharged under the act of August 23, 1842, is entitled to the three months' extra pay provided for by said act.—*Vol. 9, p. 406.*

20. Where a regiment was raised to serve during the war with Mexico, and at the close of the war was ordered to be marched home and then mustered out of service, an officer belonging to it, who resigned his commission after hostilities had terminated, but before the regiment had reached home, is not entitled to the three months' extra pay.—*Vol. 15, p. 61.*

21. A soldier holding a certificate of merit, who re-enlists in the army in the manner specified in the 29th section of the act of July 5, 1838, is entitled to have the additional two dollars per month given by his certificate, included in computing the three months' extra pay allowed him by that act, as a bounty for re-enlistment.—*Vol. 15, p. 337.*

22. An officer or soldier is not entitled to but *one* extra pay, even if he served two enlistments in the Mexican war.

23. Extra pay and arrears of pay, may be legally paid to the mother of a deceased soldier, he being an illegitimate son, leaving neither wife or child.

#### CLAIM FOR THREE MONTHS' EXTRA PAY FOR AN OFFICER, OR SOLDIER, &c.

STATE OF..... } ss.  
COUNTY OF..... }

BE IT REMEMBERED, That on this..... day of....., A.D. one thousand eight hundred and fifty....., personally appeared before me the subscriber,....., and made oath in due form of law, and on his oath states that he is the identical....., who was a....., in the company of....., commanded by Capt....., in the Regiment commanded by Col....., that he enlisted at....., on the... day of....., 184...; and was honorably discharged at....., on the... day of....., 184...; on account of..... that he has never received the three months' extra pay authorized by the act of July 18, 1848, nor made any application therefor, except the present: and.....

And further, that he hereby appoints..... his attorney, and authorizes him to receive a draft payable to deponents order for whatever sum may be allowed on the same, and to attend to and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive a like draft for all sums of money that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....

WITNESS :.....

AND I HEREBY CERTIFY, That at the same time, personally appeared before me....., and....., known to me to be *two credible witnesses*, and who, being duly sworn, depose and say, each for himself, that the above named....., is to them well known. That he signed the said affidavit in their presence, that he is now present, and is, to their knowledge, the identical person named in the above deposition, and that the said affidavit is correct, as they verily believe; that they are acquainted with the said....., and that they are, each, wholly disinterested.

WITNESS :.....

SUBSCRIBED AND SWORN TO, before me, }  
upon the day and year first above written. }  
....., J. P.

**CLAIM FOR THREE MONTHS' EXTRA PAY FOR WIDOWS,  
HEIRS, &c.**

STATE OF..... } ss.  
COUNTY OF..... }

BE IT REMEMBERED, That on this..... day of....., A.D. one thousand eight hundred and fifty....., personally appeared before me, the subscriber,....., and made oath in due form of law, and on oath, states that she is the widow of....., who was a..... in the company of....., commanded by Captain....., in the regiment commanded by Colonel.....; that he enlisted at....., on the..... day of....., 184... and was honorably discharged at....., on the..... day of....., 184..., on account of.....

That her said husband died on the..... day of....., A.D. 18..., as will appear by proofs hereto annexed. That she has never received the three months' extra pay authorized by act of 18th July, 1848, and makes this declaration as an application therefor.

And further, that she hereby appoints....., her attorney, and authorizes him to receive a draft or certificate, payable to her order, for whatever sum may be allowed on the same, and to attend to and procure the settlement of such business as deponent may have with the United States, in any office or department of the same, and to receive and receipt for all sums of money that may be found due deponent, upon any account or claim now unsettled.

WITNESS :.....

WITNESS :.....

AND I HEREBY CERTIFY, That, at the same time, personally appeared before me,....., and....., known to me to be two credible witnesses, and who, being duly sworn, depose and say, each for himself, that the above named....., is the widow of....., who was a..... in the company commanded by Captain....., in the war with.....; that they lived together as husband and wife, and were reputed to be such, of which deponents have no doubt. That her husband, the said....., died on the..... day of....., A.D. 18.... That the said....., now present, is, to their knowledge, the identical person named in the above deposition, and that the said affidavit is correct, as they verily believe; that they are acquainted with the said....., and that they are, each, wholly disinterested.

WITNESS :.....

SUBSCRIBED AND SWORN TO, before me, upon }  
the day and year first above written. }

....., J. P.

STATE OF..... } ss.  
COUNTY OF..... }

I HEREBY CERTIFY, That....., Esquire, before whom the foregoing affidavits were taken, and who has thereunto subscribed his name, was, at the time of so doing, a....., in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... County Court, (a Court of Record,) this..... day of....., A.D. 185...  
....., Clerk.

## PAY OF THE NAVY.

## DECISIONS OF THE SECOND COMPTROLLER.

[The vol. and page refer to the volume and page of the Decisions in the Comptroller's Office.]

1. Persons who execute allotments have a right to revoke them whenever they please. They are not intended, nor can they be used, to secure the payment of debts. They are allowed only to provide for the support of the families of those by whom they are signed. If the allotment be stopped by the person who executed it, the attorney named has no remedy against him except what any other creditor would have.

Payments on allotment tickets are made to no other person than the attorney therein named, or some one duly authorized by such attorney, or by the Secretary of the Navy, to receive them.

An officer cannot have an allotment running unless he is absent from his family and on duty.—*Vol. 6, p. 38.*

2. The members of a Naval court-martial are considered as on duty from the time of reporting until the dissolution of the court by order of the Department, and are to be paid accordingly, though they may have been in the mean time discharged by the president of the court, and reconvened by the Department.—*J. S. Lee's case, May 5, 1851.*

3. Citizen Judge Advocates of Naval courts-martial are to be allowed ten dollars per day while employed in making preparation for and attending the trial, and ten dollars for every fifteen pages of record; each page to contain at least 180 words.—*Dec. Sec. Compt., Nov. 15, 1839.*

4. One who attempts in good faith, and with reasonable prospect of success, to obey a summons to attend a court-martial as a witness, will be entitled to his expenses if he accidentally fail. But if the summons reach him at so late a day, or if he delay so long after he receives it as to leave no reasonable ground to suppose that he can arrive in season to testify, the expenses of his journey will not be allowed.—*Vol. 15, p. 476.*

5. A clerk to a Judge Advocate of a Naval court-martial, is allowed to assist in preparing the record, and his compensation is fixed at three dollars per day while actually employed—if he hold no other situation in which he receives pay from Government.—*Dec. Sec. Compt., August 26, 1851.*

6. Citizens, when attending Naval courts-martial as witnesses, are entitled to the allowance provided by the Regulations of January 20, 1831, to wit, two dollars per day, and to the same traveling allowance with officers.—*Dec. Sec. Compt., December 1, 1841.*

## DECEASED SEAMEN.

7. The captain's clerk is not to be regarded as "an officer," within the meaning of the regulation requiring that the will of a seaman shall be attested by an officer.—*W. Clark's case, 10 May, 1837.*

8. Wills of seamen and marines, whether in actual service or not, are required to be in writing, and attested by an officer.—*Dec. Sec. Compt., April 26, 1847.*

9. The act of March 3, 1835, regulating the pay of the Navy, prohibits any special allowance to the officers therein named for expenses incurred by reason of sickness, whether for medical attendance or otherwise.—*Dec. Sec. Compt., May 2, 1840.*

10. When any officer of the Navy, while attached to a receiving ship, employed on shore duty, or on leave of absence, shall be admitted into a Naval Hospital, he will be charged with the costs of his subsistence while he may remain in such Hospital, but in no case shall such charge exceed the value of the Navy ration, viz., twenty cents per day, which will be deducted from the officers' accounts, and credited to the Navy Hospital Fund.—*Regulation of Sec. Navy, under the law of March 3, 1851; June 3, 1851.*

11. Since the passage of the act of March 3, 1835, which greatly increased the pay of officers of the Navy, no allowance can be made to a private physician for medical services rendered to an officer of the Navy.—*Vol. 13, p. 319.*

12. When an officer is promoted, and his new commission specifies that it is to take effect from an antecedent date, he is entitled to the pay of the superior grade from such antecedent date, without regard to the nature of the duty performed by him in the intermediate time.—*Dec. Sec. Compt., January 11, 1840; Mid. Jenkins's case, September 13, 1836.*

13. Officers of the Navy when suspended from duty merely, under sentence of a court-martial, are entitled to their pay.—*Vol. 6, p. 31.*

14. An officer promoted while under suspension by sentence of a court-martial, is thereby restored to service.—*Dec. Sec. Compt., March 21, 1842.*

15. Officers of the Navy who are suspended from duty by sentence of court-martial, are to receive "leave of absence pay," unless it is otherwise determined by the court.—*Case of Sur. Codwise, September, 1836.*

16. When the President disapproves of the sentence of a court-martial, cashiering an officer, and restores him to duty, the proceedings of the court are to be considered canceled, and the officer is entitled to his pay.—*Passed Mid. Barney's case, May 3, 1847.*

17. A greater number of officers on board a vessel of war than the complement of such vessel, cannot be paid.—*Dec. Sec. Compt., 23 March, 1838.*

18. Two ships of war, without regard to size, are sufficient to form a squadron in such a sense as to entitle the officer in the actual command to the pay of a commander of a squadron.—*Captain Geisenger's case, August, 1834.*

19. Under the act of February 6, 1811, one ration per day is to be deducted from the pay of both officers and seamen while in hospital, for the benefit of the Navy Hospital Fund.—*Dec. Sec. Compt., August 24, 1835.*

20. The distribution of prize money does not entitle an officer to duty pay.—*Dec. Sec. Compt., February 1, 1849.*

21. The evidence required to sustain payments to officers of the Navy temporarily performing the duty of those of a higher grade previous to the act of June 17, 1844, and to acting masters since that time, is a written acting appointment from the Secretary of the Navy, or, if at sea, from the commanding officer of a squadron or vessel on separate service, except in cases where the officer performing the service is himself the commander of such squadron or vessel.—*Vol. 5, p. 359.*

22. When an officer of the Navy is furloughed "until further orders," and subsequently receives an order to report himself as a witness before a court-martial, the order puts an end to the furlough.—*Dec. Sec. Compt., April 12, 1835.*

23. An officer attending on prize causes in which he is himself concerned, after the delivery over to the marshal of the prize vessels, is not to be considered on duty, unless he is acting under the special order of the Department.—*Dec. Sec. Compt., March 1, 1849.*

24. It has been the uniform practice to consider officers who return from a foreign station by permission in consequence of sickness, and who do not return to their vessels, as passengers merely and as not entitled to duty pay on their passage home.—*Dec. Sec. Compt., May 3, 1847.*

25. Preparatory orders are given for the convenience of the officer, and do not put him on duty pay.—*Case of Capt. Thos. Ap. C. Jones, July 25, 1845.*

26. When an officer shall be proceeding to a station or returning from one, under orders not given at his own request or for his convenience or accommodation, he is to be considered on duty, and entitled to pay from his domicile or station, provided there shall be no unnecessary delay on his part.—*Lieut. Paulding's case.*

27. An officer by receiving an order to attend his own trial before a court-martial, is not thereby raised from "leave" pay to "duty" pay.—*Captain W. C. Bolton's case, Nov. 29, 1841.*

28. Officers are entitled to full pay when proceeding, under orders, to join a ship or station, from the time when they leave their domicile in obedience to such order, unless it be expressed in the order itself, that they are not to receive such pay.—*Dec. Sec. Compt., Jan. 30, 1837.*

29. Officers reporting for duty on a future day designated in an order, may be allowed a reasonable time for performing the necessary travel, and while so traveling shall be regarded as on duty.—*Dec. Sec. Compt., Jan. 30, 1837.*

30. An officer on duty, ordered to attend his own trial before a court-martial, and who is honorably acquitted, is allowed duty pay.—*Lieut. C. H. Poor's case, July 6, 1843.*

31. Receiving vessels are not to be regarded as vessels in commission for sea service, and consequently the officers are not entitled to sea pay, nor to the ration allowed to officers on sea duty.—*Dec. Sec. Compt., Nov. 1, 1843.*

32. A naval officer is entitled to his sea pay while temporarily absent from his ship in attendance as a witness before a civil court.—*Lieut. G. F. Sinclair's case, Oct. 28, 1844.*

33. Officers "off duty" ordered to attend a court-martial, as members or witnesses, are, by the order, if complied with, put upon duty pay, as provided by the act of 3d March, 1835.—*Dec. Sec. Compt., August 18, 1835.*

34. Under the act of April 23, 1800, sec. 3, the officers of the United States' vessels wrecked, lost, or destroyed, retain their command and authority over their crews, and are entitled to the same pay as on board ship.—*Dec. Sec. Compt., case of the "Concord," Oct. 12, 1842.*

35. Continuous service is necessary to entitle an officer to the increase of pay depending on length of service.—*Dec. Sec. Compt.*

36. The officers of the Naval Academy, including the midshipmen and acting midshipmen, are not entitled to any increase of their compensation while embarked for purposes of instruction on board the practice ship.—*Dec. Sec. Compt., July 1, 1851.*

37. Lieutenants commanding larger vessels than their appropriate command, by the complement table, are entitled to pay as lieutenants commanding.—*Dec. Sec. Compt., Dec. 29, 1851.*

38. The right of a surgeon to the pay of fleet surgeon does not depend upon his being the senior surgeon of the squadron, nor upon his having performed the duties of fleet surgeon, but upon the question whether or not he received an appointment to that grade under the act of May 24, 1828.—*Dec. Sec. Compt.*

39. The term "lieutenants commanding," as used in the act of March 3, 1835, applies exclusively to lieutenants in command of vessels, and not to such as have command of bodies of men on shore.—*Dec. Sec. Compt., Feb. 21, 1840. Lieut. H. H. Bell's case.*

40. Lieutenants of the Navy, commanding the United States' mail steamships, will be allowed the pay of lieutenants commanding, and passed midshipmen, serving as watch officers in said ships, the pay of passed midshipmen on duty.—*Lieut. Schenck's case, Nov. 10, 1851.*

41. The increased pay of a surgeon in the Navy, ordered to report for duty on a future day designated in the order, will commence on that day, if he shall so report.—*Vol. 5, p. 525.*

42. A surgeon in the Navy, returning from a foreign station to the United States in charge of sick seamen, is entitled to the pay which he would have been entitled to at a hospital.—*Case of Surgeon Codwise, August, 1841.*

43. The "duty pay" of surgeons commences at the date of the acceptance of their orders. All others, including past assistant surgeons, are allowed increased

pay only from the time of leaving their domicils or stations to enter upon the duty assigned them.—*Dec. Sec. Compt.*

44. The act of March 30, 1812, provides that "no person shall act in the character of purser, who shall not have been first nominated and appointed by the President and Senate." While this law remains in force, no naval officer can be allowed the pay and emoluments of purser, nor any additional compensation, while acting as such in obedience to the command of his superior officer.—*Vol. 15, p. 90.*

45. Surgeons, acting on boards of examination, are entitled to the same pay as when stationed at yards, hospitals, etc.—*Dec. Sec. Compt., Aug., 1839.*

46. An assistant surgeon, previous to the act of June, 1844, was allowed the pay of surgeon, when, by the Regulations of the Department, the complement of medical officers for any particular class of vessels was a surgeon and assistant surgeon, and the whole duty on board a vessel of that class was performed by the assistant surgeon.—*Vol. 6, pp. 372, 383, 416, 445.*

47. Passed midshipmen, performing the duty of masters under the orders of the Secretary of the Navy, are not considered as forming a part of the limited number of one hundred and eighty who are allowed by law to receive passed midshipmen's pay.—*Dec. Sec. Compt., Aug., 1846.*

48. A passed midshipman, while doing the duty of a master, under the orders of the Secretary of the Navy, is entitled to the pay of a master.—*Dec. Sec. Compt.*

49. A passed midshipman, appointed acting master of a ship by his commander, and his appointment approved by the Secretary of the Navy, is entitled to the continuance of his pay, as such, when transferred and doing duty in that capacity, or a higher one, on board a prize vessel.—*Passed Mid. Shephard's case, March 22, 1851: Passed Mid. Broadhead's case, Sept. 15, 1851.*

50. The secretary of the governor of the Naval Asylum at Philadelphia is allowed \$900 per annum, commencing July 1, 1844.—*Dec. Sec. Compt., 1845.*

51. Acting master's mates are not entitled to the \$450 per annum, provided for by the act of March 3, 1835.—*Dec. Sec. Compt., April 22, 1837.*

52. Midshipmen attending boards of examination for promotion, are entitled to duty pay while in attendance upon the board, if they pass examination and are promoted.—*Dec. Sec. Compt., August 18, 1835.*

53. The limitation created by the 4th section of the act of March 3, 1845, as to the number of officers who should receive the pay of passed midshipmen, operated as a repeal of so much of the act of March 3, 1835, as was inconsistent with it.

The 16th section of the Naval Appropriation bill of August 3, 1848, suspending the operation of that limitation from the date of the last mentioned act until the classes of 1841 and 1842 had been examined, has no retrospective effect.

All passed midshipmen were, therefore, entitled to the pay of that grade from the passage of the act of August 3, 1848, until the examinations took place; and those only who, after that period, came within the limited number of one hundred and eighty, from the date of their rank, could henceforth receive it.—*Vol. 15, p. 356.*

54. Professors of mathematics, secretaries of commodores, and captains' clerks, are to be considered on the same footing with other officers of the Navy in regard to the commencement of their pay.—*Dec. of Compt., January, 1839.*

#### PETTY OFFICERS AND SEAMEN.

55. A boatswain's mate illegally disrated and compelled to perform the duty of a seaman, is entitled to the pay of boatswain's mate.—*Case of Wm. Williams, December 8, 1842.*

56. A man enlisting as fireman on board a steamer and illegally disrated, is entitled to his pay as fireman.—*Case of Luther Parsons, November 2, 1849.*

57. Under the law of March, 3, 1837, a detained or re-enlisted seaman is entitled to an addition of one-fourth of the pay of the respective grades he

may hold during his detention or re-enlistment.—*George Greenlee's case*, October 12, 1843.

58. A yeoman on board a first class steamer is entitled to the same pay as if serving as such on board a first class sloop of war.—*Dec. Sec. Compt.*, July 25, 1845.

59. A seaman whose term of service expires while he is a petty officer, and who re-enlists under the act of March 2, 1837, will be entitled to an addition of one-fourth to his pay as such petty officer, from the commencement of his new term until his discharge in the United States, unless he shall have been disrated in the mean time by proper authority.—*Dec. Sec. Compt.*, December 22, 1839.

60. When a seaman leaves his ship after the expiration of his term of service, his detention not having been reported to the Department as required by law, he may claim the amount due him at the time of his leaving the ship.—*Chas. Johnson's case*, July 20, 1842.

61. A man on the sick list in hospital, not in a condition to be discharged, is not entitled to pay after the term of his service has expired.—*Dec. Sec. Compt.*, September 9, 1847.

62. Apprentices in the Navy are to be paid according to the table of complements.—*Dec. Sec. Compt.*, March, 2, 1843.

63. Apprentices in the Navy, discharged by writ of habeas corpus, are entitled to their arrears of pay.—*Cases of Cooper and Quayle*, May 1, 1842.

64. Officers of the Navy are not entitled to traveling allowance for journeys within the United States, unless made in pursuance of orders.—*Vol. 15, p. 342.*

65. When a naval officer is promoted while on a foreign station, and returns home, not at his own request, but in consequence of the inability of the commanding officer to give him duty appropriate to his rank, he is to be regarded as returning under orders.—*Case of Lieut. Wm. Green.*

66. When officers of the Army or Navy, without the United States, are obliged to pay for their transportation, in the performance of duties assigned them by their commanding officers, such expenditures are to be refunded.—*Dec. Sec. Compt.*, July, 1843.

67. Per diem and traveling allowances to witnesses, other than naval officers, summoned before marine courts-martial, "by authority derived from the Navy Department," are to be regulated by the allowances in such cases in army courts-martial.—*Act of June 30, 1834, assimilating Army and Marine Corps.*

68. A naval officer who changes his place of residence, giving no notice thereof to the Department, if ordered on duty, will be entitled to travel pay from his former place of residence only, if the distance is thereby increased.—*Case of Mid. Alexander*, Nov., 1838.

69. Officers in charge of drafts of men, traveling under orders from one post to another, are entitled to the legal allowance of ten cents per mile, according to the Post Office table of distances.—*Dec. Sec. Compt.*, Dec. 9, 1837.

70. An officer at St. Louis received an order to report for duty on board his ship at Norfolk. On arriving at Washington he ascertained that the ship had sailed for New York, and he forthwith proceeded to join the ship at that port. It was decided, that as it appeared he had used proper diligence in obeying the order, he was entitled to traveling pay from Washington to New York.—*Lieut. Smith's case*, April, 1839.

71. The rate of traveling expenses, as fixed by the act of the 3d March, 1835, is the proper allowance for pursers, as well as for all other officers of the Navy, or citizens who perform travel in pursuance of orders or authority derived from the Navy Department.—*Dec. Sec. Compt.*, Feb. 2, 1837.

72. Assistant surgeons are not entitled to traveling expenses in going to or returning from the place where the medical board of examination is convened, unless they are both examined and passed.—*Case of Dr. Holmes*, November 23, 1843.

73. Midshipmen, who shall produce a certificate from the president of the board of examination, that they have "passed," are to be paid their traveling expenses at the rate of ten cents per mile, according to the Post Office table of distances. No per diem is allowed.—*Dec. Sec. Compt.*, April 18, 1835.



74. Assistant surgeons, attending examination for promotion, are placed on the same footing as to travel, etc., as midshipmen under similar circumstances.—*Dec. Sec. Compt.*, 1839.

75. The same rule in regard to travel applies to assistant engineers, when permitted to attend boards of examination for promotion or admission, that is applied to assistant surgeons and midshipmen under similar circumstances.—*Thos. A. Jackson's case*, Dec. 11, 1851.

76. Midshipmen failing to pass, although regarded as on duty, are not entitled to traveling expenses.—*Dec. Sec. Compt.*, June, 1836.

## MARINE CORPS.

### DECISIONS OF THE SECOND COMPTROLLER.

#### MEDICAL ATTENDANCE.

[The vol. and page refer to the volume and page of the Decisions in the Comptroller's Office.]

1. Under the general regulations of the Army, par. 1214, edition of 1841, medicines and medical attendance may be furnished to the officers, non-commissioned officers, musicians, and privates, (and to their families,) of the marine corps.—*Dec. Sec. Compt.*, 1 *qr.* of 1840. See *Maj. A. A. Nicholson's act*.

2. In March, 1848, a marine officer, in charge of the recruiting rendezvous in New York, was sick and employed a private physician, no medical attendance being furnished by the Government, and no surgeon attached to the rendezvous, the account of the physician was allowed by the Second Comptroller.—*Ses Lieut. F. B. McNeill's act*.

#### PAY.

3. The officers of the marine corps, except the adjutant and inspector, are entitled to the same pay and allowances as officers of similar grades in the infantry of the Army.—*Vol. 6*, p. 467.

4. Only one officer can receive the allowance of senior of marines for a squadron at the same time. The accounts of officers claiming this allowance must be certified by the commanding officer of the squadron; and it must appear from the certificate, that the claimant was the senior marine officer of the squadron for the time charged.—*Dec. Sec. Compt.*, April 22, 1834.

5. Under the opinion of the Attorney General, of July 21, 1836, the actual command of any number of men sufficiently large to constitute, according to the usages of the Navy Department, a detachment of marines, will entitle the commander, who is responsible for the care of their clothing, etc., to the allowance given in the 2d section of the act of March 2, 1827.—*Vol. 6*, p. 577.

6. A lieutenant of marines, serving with his corps in Mexico, while acting as assistant commissary of subsistence, and also as commander of his company, was allowed the same additional pay as is allowed to officers of the army for performing the duties of acting assistant commissary, and also the \$10 per month additional pay for his duty and responsibility respecting the arms, clothing, etc.—*See Paymaster Kirby's account*, July 27, 1849.

7. An officer of marines attached to a Navy Yard or station, or to a squadron, and charged with the delivery of clothing and responsible therefor, is considered in command of a detachment without regard to the number of marines under his command.—*Vol. 6*, p. 589.

8. Captains and subalterns in the Marine Corps are allowed \$10 per month when charged with the responsibility for Army clothing, &c., of a guard of marines on board vessels of war of the class of frigates and above, and at naval stations.—*Dec. Sec. Compt.*, July 18, 1839.

9. Officers above the rank of captain are not entitled to the \$10 per month for their duties and responsibilities with respect to arms and clothing, &c.—*Dec. Sec. Compt.*, August 21, 1838.

10. Marines on board a ship are eligible, and may be paid as surgeon's stewards, masters-at-arms, ship's corporals, and yeomen, provided they are qualified and regularly appointed by competent authority, and provided they relinquish all claim to the pay of marines for the time they are paid as petty officers. When so appointed and so serving, they are to be dropped from the roll of marines, and entered on the roll of ship's company, "to be returned to marines when they cease to act as petty officers."—*Decision of Fourth Auditor, sanctioned by Sec. Compt., March 7, 1848.*

11. The services of a corporal of marines as hospital steward, are to be considered fatigue duty, and as coming within the law of March 2, 1819, and entitling him to the 15 cents per day provided by that act.—*Letter of Sec. Compt., May 4, 1843, to W. P. C. Barton, Med. Bureau.*

12. The laws of Congress provide for one Assistant Quartermaster in the Marine Corps; only one, therefore, can claim pay as such.—*Dec. Sec. Compt., December 20, 1850, in Lieut. Gillespie's case.*

13. An officer of the Marine Corps, holding a brevet commission, is entitled to brevet pay when on duty and exercising a command, which, according to the regulations of the Army, is appropriate to the same brevet rank in the infantry. And in applying this rule, inasmuch as the Marine Corps is not organized in companies, a number of men equal to the legal complement of a company of infantry is to be regarded as a company.

And when the command consists of several detachments, each large enough to be regarded as such, and actually separate and distinct, as in different vessels, each of such detachments is to be considered as a company.—*Vol. 15, p. 468.*

14. The twenty-ninth section of the act of July 5, 1838, which authorizes bounty to non-commissioned officers on their re-enlistment, is not applicable to the Marine Corps.—*Dec. Sec. Compt., February 8, 1840.*

15. The marine hospital cannot be regarded as any part of "the Executive or Legislative Departments of the Government," within the meaning of the 2d section of the act of August 31, 1852, known as the 20 per cent. law.—*Vol. 15, p. 436.*

#### TRAVEL PAY.

16. Marines, on their discharge from service, are, like privates in the Army, entitled to traveling allowance to the place where enlisted.—*Dec. Sec. Compt., July 19, 1839.*

17. Marine officers traveling to attend a court-martial, or returning therefrom, whether as members of the court or as witnesses, are entitled to seven cents per mile only.—*Vol. 15, p. 43.*

18. No vouchers for traveling expenses of officers of the Marine Corps will be admitted, unless the routes on which the travel was performed are given, and distances charged according to the Post Office measurement on the route usually traveled.—*Vol. 15, p. 29.*

19. The traveling expenses of persons employed as clerks to officers of the Marine Corps, incurred under orders, may be refunded; but the actual expense incurred is the rule of compensation.—*Dec. Sec. Compt., March 1, 1848.*

### EXTRA PAY OF THE NAVY

#### ON COAST OF MEXICO AND CALIFORNIA.

AN ACT making appropriations for the support of the Army, for the year ending the thirtieth of June, one thousand eight hundred and fifty-one.

APPROVED, SEPTEMBER 28, 1850.

SEC. 1. (IN PART.) \* \* \* For extra pay to the commissioned officers and enlisted men of the army of the United States, serving in Oregon or California, three hundred and

twenty-five thousand eight hundred and fifty-four dollars, on the following basis, to wit: that there shall be allowed to each commissioned officer as aforesaid, whilst serving as aforesaid, a per diem, in addition to their regular pay and allowances of two dollars each, and to each enlisted man as aforesaid, whilst serving as aforesaid, a per diem, in addition to their present pay and allowances, equal to the pay proper of each as established by existing laws, said extra pay of the enlisted men to be retained until honorably discharged—this additional pay to continue until the first of March, eighteen hundred and fifty-two, or until otherwise provided.

AN ACT making appropriations for the support of the Army, for the year ending the thirtieth day of June, one thousand eight hundred and fifty-three.

APPROVED, AUGUST 31, 1852.

SEC. 3. *And be it further enacted*, That so much of the act, making appropriations for the support of the army, for the year ending the thirtieth of June, eighteen hundred and fifty-one, approved the twenty-eighth of September, eighteen hundred and fifty, as provides extra pay to the commissioned officers and enlisted men of the United States, serving in Oregon or California, be, and the same is hereby, continued in force for one year, from the first day of March, eighteen hundred and fifty-two, and that the provision of the last mentioned act be, and is hereby, extended to New Mexico during the current year provided for by this section. \* \* \*

AN ACT making appropriations for the Naval Service, for the year ending the thirtieth of June, one thousand eight hundred and fifty three.

APPROVED, AUGUST 31, 1852.

SEC. 1. (IN PART.) \* \* \* And the proper accounting officers of the Treasury be, and they are hereby authorized and directed to allow and pay, out of any money in the Treasury not otherwise appropriated to the officers, petty officers, seamen and marines of the United States navy, and to the officers and men of the revenue service, who served in the Pacific Ocean, on the coast of California, and Mexico, since the twenty-eighth of September, eighteen hundred and fifty, the same increased or additional compensation, as has been by law directed to be paid to the officers and soldiers of the army who served in California. \* \* \*

AN ACT making appropriations for the Naval Service for the year ending the thirtieth of June, one thousand eight hundred and fifty-four.

APPROVED, MARCH 3, 1853.

SEC. 1. (IN PART.) \* \* \* And the proper accounting officers of the Treasury be, and they are hereby, authorized

and directed to allow and pay, out of any money in the Treasury not otherwise appropriated, to the officers, petty officers, and seamen of the United States Navy, to the officers, non-commissioned officers, musicians and privates of the Marine Corps, and to the officers and men of the Revenue Service who served in the Pacific Ocean, on the coast of California and Mexico, during the late war with Mexico, and since the conclusion of the war up to the twenty-eighth of September, eighteen hundred and fifty, the same additional compensation as has been by law directed to be paid to the officers and soldiers of the Army who served in California; and that this provision allowing extra pay, as well as that contained in the navy appropriation act of August thirty-first, eighteen hundred and fifty-two, shall extend to and include all naval storekeepers who were stationed on the Pacific coast; and the additional compensation authorized by the foregoing provision, and by the navy appropriation act of eighteen hundred and fifty-two, shall be paid to the legal representatives of all deceased persons who would have been entitled to receive the same if living.

Claims for the extra pay granted by the foregoing acts of Congress, to the officers and men of the Navy, are examined and settled by the Navy Agent at Washington, D. C. (ALBERT G. ALLEN, Esq.,) under *regulations* issued by the second Comptroller of the Treasury, (Hon. J. M. BRODHEAD,) of which the following is a copy :

TREASURY DEPARTMENT, }  
*Second Comptroller's Office, March 1, 1854. }*

TO ALBERT G. ALLEN, Esq., *Navy Agent, Washington, D. C. :*

SIR : In addition to the present regulations on the subject of "extra pay," granted by the acts of August 31, 1852, and March 3, 1853, to the officers and men of the Navy who served in the Pacific, on the coast of California and Mexico, during the late war with Mexico, the following are made necessary by the increasing number of spurious claims. You will enforce them in all cases, in which the papers shall be executed after the 20th instant, except in California and Oregon, where the time may be extended to the 15th of April next; and when the new regulations and forms have been sent to individual agents, or claimants, *their applications* must comply with such regulations, if the papers were

executed after the date at which, in due course of mail, the regulations were received.

1. The claimant will add to his oath of identity that he has not previously applied for payment of his extra pay; or, if he has applied, he will state the circumstances, the time, and the name of his attorney or assignee, if he employed any.

2. In case the claim purports to have been assigned, or the power of attorney recites a valuable consideration, the amount of the consideration of such power of attorney or assignment must be stated in dollars and cents, by words written at length in the body of the instrument, and not at the top, or beginning of the power. When a consideration is subsequently denied by the original claimant, the onus of proof will be placed upon the attorney or assignee.

3. The magistrate or notary before whom the power of attorney or assignment may be executed, must add to his certificate that no blanks, interlineations, nor erasures, were in the instrument at the date of his authentication thereof; or if there were any, he must describe them according to facts. He must also name the papers accompanying said instrument.

4. There having been instances in which genuine official seals, cut from authentic official documents, have been pasted upon forged papers, it will be required that official seals be not merely pasted upon the instrument, but they must be impressed upon the paper attested.

5. Whenever the signature to any voucher is made by a × mark, a witness thereto, other than the magistrate or notary acting in the case, will be required.

6. Claimants not having convenient personal access to the Navy Agent's office, and who are ignorant of the sum allowed them, will be furnished with a statement of the sum *only* upon their first filing their oath of identity, with their discharge annexed; or if the claimant has lost his certificate of discharge, let him account for its absence.

7. When payment is claimed by an administrator, the right of the person to administer according to the laws of the State in which the letters of administration were granted must appear in the papers from the proper court; and if the right vested previously in others, it must be shown that they have renounced, or the reason of their non-appointment must be stated. As letters of administration appear to be obtained with extreme facility, and as administrators are applying as legal representatives of persons who are alive, and are applying for themselves, great caution should be

exercised in administration cases; and if need be, additional proof of death, etc., should be required, though the letters of administration may be granted in due form. The amount of the penalty of the administrator's bond should be stated, and payment should not be made unless it is double the amount of the claim. The administrator in his oath of identity should be required to describe the person of the decedent he represents—that is, his age, height, complexion, color of eyes and hair; stating whether his knowledge was derived from personal acquaintance, or from the information of others.

J. M. BRODHEAD, *Comptroller*.

### FORMS AND INSTRUCTIONS.

#### FORM OF AN OATH OF IDENTITY FOR A PERSON CLAIMING AS PETTY OFFICER, SEAMAN, ORDINARY SEAMAN, LANDSMAN, OR BOY.

I, ....., do solemnly swear that I am the identical ..... who served by that name as a ..... on board the U. S. ship ....., in the Pacific, on the coast of California and Mexico, from ..... to ..... 18...., and who is named in the certificate of discharge, dated ..... 18...., signed by ....., which is herewith presented and surrendered; [or if his discharge is sold, lost, or otherwise disposed of, the facts and circumstances accounting for it must be sworn to.] I also solemnly swear that I am now ..... years of age, am a native of ..... that I enlisted at [name the place or port, rendezvous or vessel.] on or about the ..... day of ....., 18...., into the grade of ....., that my ship's number was .... and that I performed duty on board of [name in succession each vessel on which service was performed during the whole enlistment or enlistments, places and dates of transfer.] I also solemnly swear that I have not made any previous or other application for the extra pay now claimed by me; [or if he has, state when, where and how] and further, that I now reside at ....., and am employed as .....

WITNESS.....

SWORN TO AND SUBSCRIBED before me, this ..... day of ....., A.D. 18.... And I certify that to my knowledge the statement of deponent in regard to his residence and employment is true; my knowledge of deponent being derived from [here the magistrate will state whether from personal acquaintance or otherwise.] And I also certify that the above-named deponent appears to be about the age stated by him; that he is about .... feet .... inches in height; of .... complexion, .... hair, and .... eyes.

[To be signed by authenticating officer.] .....

#### FORM OF RECEIPT OF CLAIMANT.

Received this ..... day of ....., 18...., of ....., Navy Agent at Washington, D.C., the sum of ..... dollars and ..... cents, in full for services rendered by me on board the U. S. ship ..... in the Pacific, on the coast of Mexico, in the years ....., for which services extra pay is granted by the act of Congress entitled "An act making appropriations for the naval service for the year ending June 30, 18...."

[To be signed in duplicate by claimant.] .....

## FORM OF ACKNOWLEDGMENT OF RECEIPT.

STATE OF..... } ss.  
 COUNTY OF..... }

On this ..... day of ....., A.D. 185..., before me....., a ..... in and for the county and State aforesaid, personally appeared....., who signed the foregoing receipt, in duplicate, in my presence; and I certify that he is the same..... who claims to have served on board the U. S. ship....., in the Pacific, on the coast of Mexico and California, in the years.....

[To be signed by authenticating officer.] .....

Duplicate receipts in the foregoing form are required for each vessel, and for each act, when payment is claimed under more than one, to be signed by the claimant or his attorney in his name. When he is to be paid through a third party, in lieu of his receipts, he must execute, substantially in the following form, a POWER OF ATTORNEY, in which, if there be a valuable consideration named, it must not be recited at the commencement, as is often done, or over the top, but as prescribed in the body of the power.

## FORM FOR A POWER OF ATTORNEY.

KNOW ALL MEN BY THESE PRESENTS, that I, ....., being entitled to extra pay, under the act of Congress entitled "An act making appropriations for the naval service for the year ending June 30, 185...", approved ....., 185..., amounting to ..... dollars and ..... cents, as a ..... from....., 18..., to ....., 18..., on board the U. S. ship ....., which served in the Pacific ocean, on the coast of California and Mexico, since May 13, 1846, for and in consideration of the sum of ..... dollars to me in hand paid, do hereby appoint ..... my attorney, for me and in my name to demand and receive from the Navy Agent at Washington, D.C., or other proper officers of the United States, the amount of extra pay herein before recited, and to receipt therefor, hereby confirming all that my said attorney may lawfully do in the premises, as fully as if done by myself.

SIGNED AND SEALED in our presence, {  
 this .... day of ....., 185... }

WITNESS :.....  
 WITNESS :.....

STATE OF..... } ss.  
 COUNTY OF..... }

On this .... day of ....., A.D. 185..., before me, a ..... in and for the State and county aforesaid, an officer having authority to take acknowledgment of deeds, personally appeared....., to whom I read and fully explained the foregoing power of attorney, and who signed and acknowledged the same in my presence to be his free act and deed; and I further certify that at the time of taking such acknowledgment the power or warrant of attorney aforesaid contained neither a blank, an interlineation, nor an alteration, [or if it did, describe the same according to the facts,] and that I have annexed hereto [specifying the papers he may affix.]

....., J. P.

A certificate of identity from a commissioned or warrant officer of the Navy will be required in ALL cases where the discharge is lost or mislaid, in the following form:

I CERTIFY that the signature to the [within, foregoing, or annexed receipt, in duplicate, or power of attorney, as the case may be,] is witnessed by me; that it was signed in my presence by ..... who is well known to me as the identical person who served by that name on board the United States ship ....., in the

Pacific, as a . . . . ., in the year . . . . , and who is named in the discharge herewith annexed. [*If the discharge be not produced, the officer will so vary the certificate as to suit other facts within his knowledge in reference to his discharge or service.*]

(*To be dated and signed by the officer, subjoining his rank,*)

If the discharge or a certified copy thereof be furnished, and the certificate of some commissioned or warrant officer cannot be obtained, the claimant will so state on oath, giving the reasons, and the affidavit of two credible and disinterested witnesses will be required instead, as follows :

#### FORM OF AFFIDAVIT OF TWO WITNESSES.

STATE OF . . . . . } ss.  
COUNTY OF . . . . . }

On this . . . . . day of . . . . ., 185 . . , before me, a . . . . . in and for the State and county aforesaid, duly qualified to administer oaths, personally appeared . . . . ., residing at . . . . ., and employed as . . . . ., and also . . . . ., residing at . . . . ., and employed as . . . . ., who are known to me as credible witnesses, residing and employed as stated, and who, being duly sworn, depose and say, that they reside and are employed as aforesaid; that they have a personal knowledge of . . . . ., who signed the foregoing receipts [*or power of attorney, as the case may be,*] in their presence, and that he is the identical . . . . . who served on board the U. S. ship . . . . . as a . . . . . from . . . . . to . . . . . and who is named in the discharge dated . . . . ., and signed by . . . . . which he affixed, in their presence, to this original receipt; that their knowledge of him was obtained [*here state fully how obtained. If they served on the ship at the same time, they will give their rate, ship's number, and, if more than one of the same name was on the ship, their numerical designation, as John Smith 1st.*] And they further depose, that they have no interest in the claim of the said . . . . . for extra pay.

SWORN TO AND SUBSCRIBED, the day and }  
year above written, before me: }

(*To be signed by authenticating officer.*)

If the claimant be, at the time of making his application, in the naval service of the United States, he will make the statement required in the foregoing oath of identity, in the form of a declaration, simply substituting the word "declare" for "swear," wherever it occurs; and sign the same before a commissioned officer of his vessel or station, who will certify to the fact, and also to the personal description of the claimant, as required from a civil authenticating officer. This declaration must be accompanied by the same PROOFS of identity, in every respect, as the oath of identity of a claimant not in the service.

Extra pay due a deceased person may be paid to his legal representatives, made such by letters testamentary, if his will expressly recites it—or to a residuary legatee. The executor or legatee must furnish an authenticated copy of the will, from the court which admitted it to probate, together with his oath of identity, receipts, or power of attorney, etc. It may also be paid on letters of administration, which letters of administration must recite the names of *all* the heirs, and there must be indisputable evidence presented of the death of the person on account of whose service the claim is made, provided such letters show that the amount of the bond is double the amount due, and that such letters were granted to the only heir, or to the heir having the first right to administer, or at the request of all the other heirs, or to a creditor, and, in the latter case, only to the amount of such claim against the deceased as may be approved by the court granting such letters.



## FORM OF OATH OF IDENTITY BY EXECUTOR, ADMINISTRATOR, &amp;c.

I, ....., of ....., in the county of ....., State of ..... , depose and say that I am the identical ..... named in the accompanying letters of administration, [or *Letters testamentary, or copy of letters, etc., as the case may be.*] on the estate of ....., deceased, and that said letters are unrevoked and now in full force and effect; that the said ..... was at the time of his death a legal resident of ....., county of ....., State of ....., and that he was the identical person who served by that name on board the U. S. ship ....., on the coast of California, in the years ....., who is named in the certificate of discharge herewith surrendered, and who died [*state where he died, and whether he was in the service of the U. S. or not at the time of his death*] on or about the ..... day of ....., 18.., and to whose estate extra pay is due under the provisions of the act of Congress of March 3, 1853, and for which extra pay I now apply as his legal representative. And I further swear that the said ..... was a native of ....., was ..... years of age, that he was about ..... feet ..... inches in height, of ..... complexion, ..... hair, and ..... eyes, and that he entered the naval service at ..... on or about the ..... day of ....., 18... [*State whether these facts were matters of personal knowledge to the deponent, or were derived from others. If the discharge be not produced, he must depose to having made due search for it among the effects of decedent, and to any facts in reference to the disposition of it within his knowledge.*]

STATE OF ..... }  
COUNTY OF ..... } ss.

Personally appeared before me, a ....., in and for the State and County aforesaid, duly qualified to administer oaths, ....., who signed the foregoing deposition in my presence, and made oath to the truth of the same.

And I certify that I know the said deponent to be the administrator named in the accompanying letters of administration.

Witness my hand this ..... day }  
of ..... A.D. 18.. }

(Justice of the Peace, or other magistrate )

If an executor or administrator desires to be paid through a third party, he will execute a power of attorney and acknowledgment of the same according to the forms heretofore prescribed, making the necessary changes.

## HORSES AND OTHER PROPERTY, LOST OR DESTROYED.

AN ACT to provide for the payment of horses and other property lost or destroyed in the military service of the United States.

APPROVED, MARCH 3, 1849.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any field, or staff, or other officer, mounted militiaman, volunteer, ranger, or cavalry, engaged in the military service of the United States since the 18th of June, 1812, or who shall hereafter be in said service, and has sustained, or shall sustain damage without any fault or negligence on his part, while in said service, by the loss of a horse in battle, or by*

the loss of a horse wounded in battle, and which has died, or shall die, of said wound, or, being so wounded, shall be abandoned by order of his officer and lost, or shall sustain damage by the loss of any horse by death or abandonment, because of the unavoidable dangers of the sea when on board a United States transport vessel, or because the United States failed to supply transportation for the horse, and the owner was compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider was dismounted and separated from his horse, and ordered to do duty on foot, at a station detached from his horse, and when the officer in the immediate command ordered or shall order the horse turned out to graze in the woods, prairies, or commons, because the United States failed, or shall fail, to supply sufficient forage, and the loss was or shall be consequent thereof, or for the loss of necessary equipage in consequence of the loss of his horse as aforesaid, shall be allowed and paid the value thereof, not to exceed two hundred dollars; provided, that if any payment has been or shall be made to any one aforesaid for the use and risk, or for forage after the death, loss, or abandonment of his horse, said payment shall be deducted from the value thereof, unless he satisfied or shall satisfy the paymaster at the time he made or shall make the payment, or thereafter show by proof that he was remounted, in which case the deduction shall only extend to the time he was on foot; and provided, also, if any payment shall have been or shall hereafter be made to any person above mentioned on account of clothing, to which he was not entitled by law, such payment shall be deducted from the value of his horse or accoutrements.

SEC. 2. *And be it further enacted*, That any person who has sustained or shall sustain damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster of any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the military service of the United States, either by impressment or contract, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner, and any person who has sustained or shall sustain damage by the death or abandonment and loss of any such horse, mule, or ox, while in the service aforesaid, in consequence of the failure on the part of the United States to furnish the same with sufficient forage; and any person who has lost, or shall lose, or has had or shall have destroyed by unavoidable acci-

dent any horse, mule, ox, wagon, cart, boat, sleigh, or harness, while such property was in the service aforesaid, shall be allowed and paid the value thereof at the time he entered the service: *Provided*, it shall appear that such loss, capture, abandonment, destruction, or death, was without any fault or negligence on the part of the owner of the property, and while it was actually employed in the service of the United States.

SEC. 3. *And be it further enacted*, That the claims provided for under this act shall be adjusted by the Third Auditor, under such rules as shall be prescribed by the Secretary of War, under the direction or with the assent of the President of the United States, as well in regard to the receipt of applications of claimants as the species and degree of evidence, the manner in which such evidence shall be taken and authenticated, which rules shall be such as in the opinion of the President shall be best calculated to obtain the object of this act, paying a due regard as well to the claims of individual justice as to the interest of the United States; which rules and regulations shall be published for four weeks in such newspapers, in which the laws of the United States are published, as the Secretary of War shall direct.

SEC. 4. *And be it further enacted*, That in all adjudications of said Auditor upon the claims above-mentioned, whether such judgments be in favor of or adverse to the claim, shall be entered in a book provided by him for that purpose and under his direction; and when such judgments shall be in favor of such claim, the claimant or his legal representative shall be entitled to the amount thereof, upon the production of a copy thereof, certified by said Auditor, at the Treasury of the United States.

SEC. 5. *And be it further enacted*, That in all instances where any minor has been or shall be engaged in the military service of the United States, and was or shall be provided with a horse or equipments, or military accoutrements, by his parent or guardian, and has died, or shall die, without paying for said property, and the same has been or shall be lost, captured, destroyed, or abandoned, in the manner before mentioned, said parent or guardian shall be allowed pay therefor on making satisfactory proof as in other cases, and the further proof that he is entitled thereto by having furnished the same.

SEC. 6. *And be it further enacted*, That in all instances where any person, other than a minor, has been or shall be engaged in the military service aforesaid, and has been or shall be provided with a horse or equipments, or with military accou-

tirements, by any person, the owner thereof, who has risked or shall take the risk of such horse, equipments, or military accoutrements on himself, and the same has been or shall be lost, captured, destroyed, or abandoned in the manner before mentioned, such owner shall be allowed pay therefor, on making proof, as in other cases, and the further proof that he is entitled thereto by having furnished the same and having taken the risk on himself.

Sec. 7. *And be it further enacted*, That in all cases where horses have been condemned by a board of officers, on account of their unfitness for service, in consequence of the government failing to supply forage, all such horses and their equipage shall be allowed and paid for, whenever the facts shall be proven, by legal and satisfactory evidence, whether oral or written, that such condemned horse and the equipage was turned over to a quartermaster of the army, whether any receipt therefor was given and produced or not.

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### RULES AND REGULATIONS.

Under the 3d section of the act, the Secretary of War, with the approval of the President, on the 26th of March, 1849, prescribed certain rules and regulations under which the claims were to be adjusted by the Third Auditor. They are substantially as follows :

Claims under the act, are divided into *three* classes, viz.:

Those under the 1st section being the *first* class,

Those under the 2d, 5th, and 6th sections, being the *second* class,

Those under the 7th section being the *third* class.

All claims to be presented to the office of the Third Auditor of the Treasury, and substantiated by such evidence as is hereinafter designated, with respect to cases of the class under which it falls.

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### FIRST CLASS OF CASES.

To establish a claim under the provision of the 1st section of the act, the claimant must adduce the evidence of the officer under whose command he served when the loss occurred, if alive : or, if dead, then of the next surviving officer, describing the property, the value thereof, at the time of entering the service, the time and manner in which

the loss happened, and whether or not it was sustained without any fault or negligence on the claimant's part. The evidence should also, in case the claimant was remounted after the loss, state when remounted, how long he continued so, and explain whether the horse whereon he was remounted had not been furnished by the United States, or been owned by another mounted militiaman or volunteer to whom payment for the use and risk thereof, or for its forage, whilst in the possession of the claimant, may have been made; and if it had been thus owned, should name the person and the command to which he belonged. And in every instance in which the claim may extend to equipage, the several articles of which the same consisted and separate value of each should be specified.

#### SECOND CLASS OF CASES.

To establish a claim under the provisions of the 2d, 5th, and 6th sections of the act, it will, in addition to the testimony required under the head of First Class of Cases, be necessary, in cases where the property lost was in the service by contract or impressment, to produce the testimony of the officer or agent of the United States who impressed or contracted for the service of the property mentioned in such claim, and also of the officer under whose command the same was employed at the time of the capture, destruction, loss, or abandonment, declaring in what way the property was taken into the service of the United States, the value thereof, whether or not the risk to which it would be exposed was agreed to be incurred by the owner; and whether or not, as regarded horses, mules, oxen, he engaged to supply the same with sufficient forage, in what manner the loss happened, and whether or not it was sustained without any fault or negligence on his part.

A parent or guardian of a deceased minor will, in addition to such testimony applicable to his claim as is previously described, have to furnish proof, that he provided the minor with the property therein mentioned, that the minor died without paying for such property, and that he, the parent or guardian, is entitled to payment for it by his having furnished the same.

SEC. 6. Besides the testimony in support of his claim hereinbefore required, every such owner thereof will have to prove that he did provide the horse, equipments, or military accoutrements therein mentioned, and took the risk thereof on himself, and that he is entitled to pay therefor, by having furnished the same and taking the risk thereof on himself,

and this proof should be contained in a deposition of the person who had been so provided by him with such horse, equipments, or military accoutrements.

### THIRD CLASS OF CASES.

To establish a claim under the provisions of the 7th section of the act, the claimant must adduce the evidence of the witnesses mentioned under the head of First Class of Cases, satisfactorily proving that the property therein described was, while in the military service of the United States, condemned by a board of officers on account of their being rendered unfit for service in consequence of the Government failing to supply forage, and that such property was turned over to a quartermaster of the United States army, explaining when the claimant was remounted, etc., as required in said first class of cases.

In no case can the production of evidence previously described be dispensed with, unless the impracticability of producing it be clearly proved, and then the nearest and best other evidence of which the case is susceptible must be furnished in lieu thereof.

Every claim must be accompanied by a deposition of the claimant, "declaring that he has not received from any officer or agent of the United States any horse or horses, equipage, accoutrements, mule, wagon, cart, boat, sleigh, or harness, (as the case may be,) in lieu of the property lost, nor any compensation for the same," and be supported, if practicable, by the original valuation list, if made by the appraisers of the property at the time the same was taken into the United service, and in cases where the loss is alleged to have occurred because the United States failed to supply transportation for the horse, and the owner was compelled by the order of his commanding officer to embark and leave him, as provided for in the first section of the law; the affidavit of the claimant must, in addition to the declaration above-mentioned, declare "that he did, in obedience to the order of his officer, leave said horse or equipage, and that he never sold or otherwise disposed of the said horse or equipage, and never received any compensation for said horse or equipage from any person whatever."

All evidence, other than the certificates of officers who at the time of giving them were in the military service of the United States, must be sworn to before some judge, justice of the peace, or other person duly authorized to administer oaths, and of which authority proof should accompany the evidence.

## FORM OF APPLICATION.

STATE OF..... }  
COUNTY OF..... } ss.

On this....day of....., A.D., 18... personally appeared before the subscriber, a Justice of the Peace, duly authorized by law to administer oaths in and for said county....., who is to me personally well known as a resident of....., in the State of....., and who, being by me duly sworn, deposes and says, that he is the identical....., who was a....., in the company commanded by....., in the regiment of....., commanded by....., that he entered the service of the United States on or about the....day of..... A.D., 18...; and was regularly mustered into said service, and mounted upon a horse of the following description, viz:.....

..... which said horse was appraised in due form of the value of \$....., that he continued mounted upon the said horse, until the....day of....., 18... when the said horse was lost in consequence of, and in the manner following, viz:.....

That at the time of the loss aforesaid he was under the immediate command of....., that he was remounted on the....day of..... A.D., 18..., on a horse, valued at \$..... which he obtained of....., who was....., and continued so remounted until the....day of....., 18..., when he was regularly and honorably mustered out of the service by.....

And further, that he has not received from any officer or agent of the United States any horse, or other property in lieu of the horse lost as aforesaid, nor has he received any compensation for the same; the same having been lost without any fault or negligence on his part.

SWORN TO AND SUBSCRIBED, before me, this }  
.....day of....., A.D. 18... }  
..... J. P.

STATE OF..... }  
COUNTY OF..... } ss.

On this....day of....., A.D. 18..., personally appeared before me the subscriber, a Justice of the Peace, duly authorized by law to administer oaths, in and for the said county....., who is to me personally well known as a resident of said county, and a credible witness: who, being by me duly sworn, deposes and says, that he is the identical....., who was the *Captain* commanding a company of..... in the Regiment commanded by Col. ...., in the service of the United States, in the war with....., that..... was a..... in the said company, having been regularly enrolled and mustered into the service, that at the time of his muster he was mounted on a horse of the following description, viz:.....

..... which said horse was duly appraised and valued at the sum of \$....., that the horse above described was lost, on the....day of....., in consequence of..... in the manner following, viz:..... which said loss was sustained without any fault or negligence on the part of the claimant.....

And deponent further states, that the said..... was remounted after said loss, on the....day of..... A.D. 18..., and continued so remounted until the....day of..... A.D. 18....

And deponent further states, that the horse upon which the said..... was remounted as aforesaid, was not furnished by the United States, or any of their officers or agents, or been owned by another mounted militiaman or volunteer, to whom payment for the loss and risk thereof, or for its forage, while in the possession of the said....., could have been made, *except*.....

And deponent further states, that the horse upon which the said.....,

was remounted, was purchased by him of one....., and the sum of \$.... paid for the same.

And deponent further states, that the said ..... was honorably discharged on the....day of....., A.D. 18....

SUBSCRIBED AND SWORN TO, before me, this }  
.....day of....., A.D. 18.... }  
....., J. P.

KNOW ALL MEN BY THESE PRESENTS, that I....., of....., named in the foregoing declaration and affidavit, do hereby constitute and appoint ..... my true and lawful attorney, authorizing him to file this my claim for payment for a horse lost in the military service of the United States, and to do all acts, necessary and proper in the premises; to receive and receipt for a draft payable to my order for such sum as may be found due upon examination and settlement of my claim.

WITNESS my hand and seal this....day of....., A.D. 18..

Signed, sealed, in presence of }  
WITNESS :..... } [SEAL]  
WITNESS :..... }

STATE OF..... }  
COUNTY OF..... } ss.

On this....day of....., 185... personally appeared before me the above named....., to me known, and acknowledged the foregoing Power of Attorney to be his act and deed for the purpose therein mentioned.

....., J. P.

STATE OF..... }  
COUNTY OF..... } ss.

I HEREBY CERTIFY, that..... Esquire, before whom the foregoing Power of Attorney has been acknowledged, and who has thereunto subscribed his name, was, at the time of such acknowledgment, a Justice of the Peace, in and for the said County and State, duly commissioned and sworn, and authorized by law to take the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of..... County Court, (a Court of Record), this.... day of....., 18....

....., Clerk.

## EXPENSES IN RAISING THE VOLUNTEER FORCE FOR THE MEXICAN WAR.

A RESOLUTION to refund money to the States which have supplied volunteers, and furnished them transportation during the present war before being mustered and received into the service of the United States.

APPROVED, MARCH 3, 1847.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and required to cause to be refunded to the several States, or to individuals for services rendered acting under the authority of any State, the amount of expenses incurred by them in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States*



for the present war, and for subsisting troops in the service of the United States, without waiting for deductions to be made from the pay of said volunteers.

AN ACT to refund money for expenses incurred, subsistence or transportation furnished, for the use of volunteers during the present war, before being mustered into the service of the United States.

APPROVED, JUNE 2, 1848.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the joint resolution approved March third, eighteen hundred and forty-seven, entitled "A Resolution to refund money to the States which have supplied volunteers, and furnished them with transportation, during the present war, before being mustered and received into the service of the United States," be, and the same are hereby, extended, so as to embrace all cases of expenses heretofore incurred in organizing, subsisting, and transporting volunteers, previous to their being mustered and received into the service of the United States for the present war, whether by States, counties, corporations, or individuals, either acting with or without the authority of any States: *Provided, however, that* proof shall be made, to the satisfaction of the Secretary of War, of the amount thus expended, and that the same was necessary and proper for the troops aforesaid.

SEC. 2. *And be it further enacted,* That an amount sufficient to refund said expenses so incurred, be, and the same is hereby, appropriated out of any money in the Treasury not otherwise appropriated.

SEC. 3. *And be it further enacted,* That, in refunding moneys under this act, and the resolution which it amends, it shall be lawful to pay interest at the rate of six per centum per annum on all sums advance (d) by States, corporations, or individuals in all cases where the State, corporation, or individual paid or lost the interest, or is liable to pay it.

Claims under the act of 2d June, 1848, for expenses incurred in raising, etc., the volunteer force mustered into the service of the United States for the Mexican war, are presented to the second and third Auditors of the treasury, for examination; who report thereon to the Secretary of War for his decision under the proviso of the first section of the act. This proviso requires that the proof shall be satisfactory to the Secretary of War, that the amount claimed was expended and was necessary and proper for the troops.

No form of application has been prescribed. It is usual for the claimant to form an abstract of his claim and make oath that it is correct, and file with it such evidence of the expenditure as may be in his possession or obtainable. In all cases it is necessary to file vouchers showing the expenditure, with dates, items, and rates of charges, and evidence of payment, if money has been advanced.

The following decisions of the Secretary of War, upon claims reported to him from time to time, show the principles governing the adjustment of claims under this act.

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1. No allowance will be sanctioned for expenses of volunteers, whether officers or men, not afterwards mustered and received into the service of the United States.

2. Personal expenses of commissioned officers in recruiting their companies, prior to muster into service, are not allowable; but the necessary traveling expenses of recognized military agents of any State, when shown by bills of particulars, and receipts for payment, will be refunded.

This has been modified by subsequent decisions of the Secretary of War, so as to allow to commissioned officers, between dates of enrollment and muster into service, the same for subsistence and quarters (board and lodging) as to privates.

3. Bills of particulars, containing dates, items, and rates of charge, must, in all cases, be furnished. It is not sufficient to show that a gross amount was expended: still less, that sums were given to individuals to expend without evidence that it was expended.

4. There must be evidence to show that the persons supplied were mustered and received into the service of the United States.

5. No more than fifty cents per man per day for subsistence, (board,) nor more than seventy-five cents per man per day for subsistence and quarters, (board and lodging,) will be sanctioned; the rate to depend upon the section of country where furnished, and the price paid for complete rations by the United States' officers at the nearest recruiting station or military post.

6. Purchases of subsistence in bulk, will be paid for at the current prices at the place of purchase: *Provided, always*, that the quantities are in proper proportion, or reasonably so, to the number of men, according to the rates of allowance in the Subsistence Department.

7. With respect to the articles of subsistence, they should be such as are recognized in the regular service, or, at any rate, if other articles are substituted, the cost of the whole must not exceed the regular supplies. Forage for mounted volunteers, under similar circumstances, will be paid for. *Bills for spirituous liquors, treating, expenses of holding elections for officers, will not be refunded or paid.*

8. Transportation and quarters, at reasonable rates, will be paid for. Transportation is restricted to the usual routes, and modes of conveyance, and

excessive quantities will not be sanctioned. Troops moving by land will not be allowed more than two four-horse wagons, and teams for the transportation of the baggage and provisions of a company of from fifty to seventy-five men. Wagon hire for the transportation of the men themselves will not be sanctioned.

9. Cases of impressment, whether of supplies or services, and damages to individuals or their property, not provided for by the act. A special act of Congress is the remedy.

10. No provision is made for bounties paid to induce men to volunteer, and of course such expenditures will not be refunded.

11. The ration of subsistence is as follows :

$\frac{3}{4}$ of a pound of pork or bacon, <i>or</i>	10 pounds of rice ;
1 $\frac{1}{4}$ pounds of fresh or salt beef,	4 quarts vinegar,
12 ounces of hard bread, <i>or</i>	2 " salt, and
18 " " bread or flour, <i>or</i>	1 $\frac{1}{2}$ pounds of candles,
12 " " corn meal,	to every one hundred rations.
with	
6 pounds of coffee,	
12 " " sugar,	
4 " " soap,	
8 quarts peas or beans, or, in lieu thereof,	

#### THE RATION OF FORAGE IS

8 quarts of corn, *or*  
12 " " oats, and  
14 pounds of hay or fodder.

12. By the acts of Congress providing for calling volunteers into the military service of the United States, during the war with Mexico, specific sums were allowed to purchase their clothing, and re-imburse their traveling expenses to the place of muster ; and as the appropriations made by Congress for these purposes were disbursed and accounted for according to law, it is necessarily to be presumed that they were applied to their proper object.

This presumption, in many instances, is known to be in accordance with the fact, and is deemed so far to be relied upon, that all claimants who seek to recover under the act of June 2d, 1848, bills for clothing furnished to, and traveling expenses of, volunteers, will be required to support their claims with the most full and satisfactory proof, and with special explanations as to the cause of their failure to obtain payment from the proper source.

13. INTEREST.—“The affidavit is not sufficiently explicit ; the claimant should state what kind of business the money was withdrawn from, and expressly aver that it was yielding interest.”

14. As the law has made the payment of interest conditional upon certain contingencies, the facts should be fully stated from which the Department can infer that the contingency has occurred.

In the present case, for instance, the claimant should state what kind of business he was in, that the Department may, if disposed, take issue upon the fact, and he should state explicitly that the business was yielding interest.

## CLAIMS AND EVIDENCE.

## DECISIONS OF THE SECOND COMPTROLLER.

[The vol. and page refer to the volume and page of the Decisions in the Comptroller's Office.]

1. Where the statement of a Government officer conflicts with that of a claimant in regard to a transaction equally within the means of knowledge of both parties, and there is no additional proof on either side, the Government will act upon the evidence of the officer.— *Vol. 15, p. 20.*

2. No parol testimony can be received at the Treasury to vary, add to, or control the terms of a written contract. On this subject, the legal rule applies. And where proposals for a contract are furnished, they cannot be resorted to for the purpose of adding to a contract, subsequently executed thereon, a feature not contained within it.— *Vol. 15, p. 151.*

3. The accounting officers are not authorized to go behind the decisions of their predecessors, except on the production of new and conclusive testimony.— *Vol. 3, p. 85.*

4. The accounting officers have no authority to allow a claim which has been fully examined and rejected by their predecessors, unless upon the production of new evidence, which removes the objection formerly existing.— *Vol. 15, p. 161.*

5. The law requires that all claims against the United States shall be settled at the Treasury Department. No officer of the Government, therefore, has a right to submit a claim to the decision of referees.— *Vol. 5, p. 1.*

6. A party who prefers a claim against the Government which is not passed by the accounting officers, and elects to resort to Congress for relief, must abide by his election, and fail or succeed in his application for redress before that body.— *Vol. 11, p. 272.*

7. After a claim has been rejected by Congress on its merits, it cannot be considered by the accounting officers of the Treasury.— *Vol. 9, p. 390.*

8. A claim against the United States in the hands of an assignee of the original creditor, is subject to all the equities existing between the assignor and the United States; and those equities, so far as they are in favor of the United States, must be first satisfied, before the assignee can reap the benefit of the assignment.— *Vol. 10, p. 53.*

9. A claim that has lain dormant for twenty-five years, cannot be allowed on evidence which is in direct conflict with that furnished by the records of the Army, at the time when the claim purports to have originated.— *Vol. 15, p. 89.*

10. The act of January 25, 1828, requires that no money shall be paid to any person for his compensation, who is in arrears to the United States, until such person shall have accounted for and paid all sums for which he may be liable.— *Vol. 11, p. 224.*

11. When an account is presented against the United States which purports to have been due for the term of twenty-eight years, the legal presumption arising from the lapse of time is, that the account has been paid, and unless that presumption can be removed, the account is not to be allowed.— *Vol. 10, p. 287.*

12. No allowance can be made by the accounting officers, for property impressed into the service of the United States, nor for any special damages done to individuals or their property, by the troops of the United States.— *Vol. 8, p. 336.*

13. The owner of certain wagons left them on public ground in such a situation as to lead the subordinates of the Quartermaster's Department to suppose that they belonged to the United States. They were used in the public service, and the owner acquiesced without notice or complaint.

Held, that he had no legal claim on the Government for the use of the wagons, nor for the damage which they sustained.— *Vol. 15, p. 156.*

14. When a purchase is made by an officer of the United States, authorized to make purchases, he is to be considered, in making such purchase, as the agent of the Government, and the party from whom he purchases is not bound to show what disposition has been made of the property.— *Vol. 6, p. 442; Vol. 15, p. 64.*

15. When a purchase is made by a person or officer claiming to be duly author-

ized, but not so in fact, the Government is not bound by the contract, unless the vendor shows, that the property purchased has been actually used in the public service.—*Vol. 6, p. 442.*

16. When an officer exceeds his powers, he becomes individually responsible, and cannot bind the Government by his illegal contract.—*Vol. 11, p. 173.*

17. The United States are not liable for property illegally destroyed by private soldiers not acting under orders. And no voucher for payment of such damages by a disbursing officer, can be allowed in the settlement of his accounts.—*Vol. 7, p. 209.*

18. Payment of any sum, due from the United States, to an officer who has become insane, can be made to his legally appointed guardian only.—*Vol. 11, p. 200.*

19. No person, but a parent, has a right to receive money belonging to a minor, until he has taken out from the proper court letters of guardianship, and a certificate that they have been issued must be sent to the Auditor's office, before the amount due a minor can be paid to the guardian.—*Vol. 6, p. 166.*

20. By law, the signature of partners to a sealed instrument will not be binding if made in the name of the firm. In such a case, each partner should sign and seal for himself in his individual capacity, and not in the name of the firm.—*Vol. 7, p. 101.*

21. In cases where a charge is made by one person, for a payment made by him to another, for freight, wharfage, drayage, or any other purpose, the particulars of the charge must be fully specified in the body of the account, and a receipt from the person to whom the payment is made must be annexed as a subordinate voucher.—*Vol. 3, p. 235.*

22. The necessity of employing counsel, and the amount to be paid for their services, are subjects for the decision of the Executive Departments of the Government.—*Vol. 9, p. 2.*

23. Claims in favor of States for services of their troops, unless otherwise directed by Congress, must be adjusted in conformity with the rules and rates of allowance prescribed by law for volunteers mustered into the service of the United States.—*Vol. 15, p. 295.*

24. Claims in behalf of States, for services of their troops, must be prepared for presentation at the Treasury, at the expense of the claimants. And expenditures for clerk hire, stationery, etc., incurred in preparing and presenting such accounts, will not be allowed.—*Vol. 15, p. 296. This decision confirmed by Attorney General Crittenden.*

25. When the compensation of an officer is fixed by law, no head of a Department, or accounting or executive officer, can increase the compensation. Such power belongs to Congress only.—*Acting Purser Goldsborough's case, April, 1840.*

26. No clerk employed in the State, Treasury, War, or Navy Departments, can, as agent or attorney, perform any services for individuals relating to claims against, or settlement with, any of the public offices.—*Letter signed by all the Heads of Departments, May 27, 1848. Recognized by Sec. Treas. as in force, September 11, 1835.*

27. In cases where periods of service rendered by those employed at a stipulated monthly rate of compensation, extend to and embrace fractional parts of any month, thirty days will be assumed and regarded as constituting the entire duration of such a month, in lieu of the twenty-eight, twenty-nine, or thirty-one calendar days it may contain, and the proportional allowance of compensation therefor will be computed accordingly. But for any full and entire month's service performed by persons so employed, they will be allowed and paid according to such stipulated monthly rate, without reference to the number of days the month may contain.—*Dec. Sec. Compt., September 5, 1848.*

28. Interest can in no case be allowed by the accounting officers, upon claims against the Government, either in favor of a State or an individual.

But, in cases where the claimant has been compelled to pay interest for the benefit of the Government, it then becomes a part of the principal of his claim, and, as such, is allowable. Such is the case of a State which has been obliged to raise money upon interest for the suppression of hostilities against which the United States should protect her.

In such cases, the amount of interest actually and necessarily paid will be allowed, without reference to the rate of it.—*Vol. 15, pp. 34, 280.*

29. The identity of a claimant under a soldier's will, must be established by other evidence than his own affidavit. The possession by the claimant of a copy of the will, purporting to be certified as such by one of the witnesses, does not constitute evidence that can be legally regarded.—*Vol. 15, p. 3.*

30. When a witness to a receipt for money signs by mark, a witness to the signature is in all cases required.—*Vol. 11, p. 183.*

31. The mark of a witness, to the signature of another, who merely affixes his mark to a receipt, is not deemed a sufficient compliance with the regulation.—*Vol. 10, p. 350.*

32. Telegraphic reports are inadmissible as evidence before the accounting officers of the Treasury.—*Vol. 12, p. 453.*

33. A notary public is subject to the same rule as other magistrates. All magistrates must obtain the necessary certificate from the clerk of some court of record — *Vol. 4, p. 330.*



## PART IV.

### MUSTER AND PAY-ROLLS

OF THE

ARMY, NAVY, AND MARINE CORPS.

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A large portion of the rolls of each branch of the service was destroyed by the conflagration of the War Department in 1814, and of the Treasury Department in 1833.

The following statement shows the location of all the military and naval rolls on file in the different executive offices at Washington, which are necessary to be consulted, in deciding upon claims for pensions and bounty land on account of service in the Army, Navy, and Marine Corps, since the war of the Revolution.





## MUSTER AND PAY ROLLS

### IN THE ADJUTANT GENERAL'S OFFICE.

1. All commissioned officers in the regular army, except Rolls burned in 1814.
  2. All enlisted men in the regular army—since the peace of February 17, 1815.
  3. Muster Rolls and inspection returns of volunteers and militia called out in the war of 1812, for the States of Vermont, New York, Pennsylvania, New Jersey, Delaware, North Carolina, and South Carolina (imperfect).
  4. Muster Rolls of volunteers and militia in the Florida war, from 1835 to 1842, and the Creek war in 1836—partially incomplete—the deficiencies supposed to be in the 2d Auditor's Office.
  5. Muster Rolls of volunteers and militia for the Mexican war, from 24th April, 1846.
  6. All enlisted men of the 10 additional regiments of the army, (say 3d dragoons or voltigeurs, and 9th to 16th infantry,) raised by act 15th February, 1847—and partially in the Pension Office.
- 

### IN THE SECOND AUDITOR'S OFFICE.

1. Rolls of volunteers and militia in the Seminole wars of 1817 and 1818.
  2. Rolls of volunteers and militia in the Black Hawk war of 1832.
  3. Rolls of volunteers and militia in the Florida wars from 1835 to 1842.
  4. Rolls of volunteers and militia in the Creek war in 1836.
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### IN THE THIRD AUDITOR'S OFFICE.

1. All enlisted men in the regular army *prior* to the peace of February 17, 1815.
  2. All volunteers and militia, *prior* to and *during* the war of 1812—to the peace of February 17, 1815.
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### IN THE FOURTH AUDITOR'S OFFICE.

Rolls of Seamen and Flotilla-men in all wars.

## MARINES.

Rolls of Marines in all wars.—Refer to Adjutant and Inspector of the Marine Corps, at the *Marine Barracks, Navy Yard, Washington, D. C.*

## IN THE PENSION OFFICE.

1. All commissioned officers in the regular army—rolls partially in this office.

2. Muster Rolls of volunteers for the Mexican war—from 24th August, 1846.

3. Enlisted men of the 10 additional regiments of the army, (say 3d dragoons or voltigeurs, and 9th to 16th infantry,) raised by act 10th February, 1847—partially in this office.

## MILITARY FORCE.

EFFECTIVE MILITARY FORCE ENGAGED IN DIFFERENT WARS, COMPILED FROM THE REPORT OF THE ADJUTANT-GENERAL OF MARCH 4, 1850.

WARS AND FRONTIER DISTURBANCES.	Comma'd Officers.	Men.	Aggregate
Late war with Great Britain, 1812.....	31,210	440,412	471,622
Seminole war, 1817 and 1818.....	413	5,498	5,911
Black Hawk war, 1832.....	491	4,540	5,031
Florida war, 1836 to 1842.....	1,621	28,332	29,953
Creek disturbances, 1836-'37.....	794	11,689	12,483
Southwestern frontier disturbances, 1836.....	161	2,642	2,803
Cherokee country, 1836 and 1837.....	238	3,690	3,928
New York frontier disturbances, 1838-'39.....	115	1,013	1,128
Aggregate.....	35,041	497,816	532,857
Mexican War, 1846 to 1848.....	3,131	70,129	73,266
Grand aggregate.....	38,172	567,945	606,117

## COMMENCEMENT AND CONCLUSION OF CERTAIN WARS AND INDIAN HOSTILITIES.

Wayne's war commenced.....	—, 1790; ended August 16, 1795.
War of 1812, commenced.....	June 18, 1812; ended February 17, 1815.
War, Seminole, commenced.....	November 20, 1817; ended October 31, 1818.
War, Black Hawk, commenced.....	April 26, 1832; ended September 21, 1832.
War, Florida, commenced.....	December 23, 1835; ended August 14, 1842.
Creek disturbances, commenced about.....	May 5, 1836; ended September 30, 1837.
Southwestern [Arkansas] frontier disturb'es. 1836; no actual war; no fighting.	
New York [Canada] frontier disturbances.....	1828 and 1839; no war; no fighting.
Mexican war, commenced.....	April 24, 1846; ended July 4, 1848.

5-7 Every regiment of the Army, except 1st Dragoons, Mounted Rifles, and 5th Infantry were engaged in the Florida war.

## STOCK OF THE UNITED STATES.

## TREASURY REGULATIONS.

TREASURY DEPARTMENT,  
REGISTER'S OFFICE, *August 15, 1849.*

All the certificates of stock issued by the United States will be signed by the Register of the Treasury, and impressed with the seal of the Department. They can be issued only upon the written order of the Secretary. A description of the existing loans, and of the denominations of the certificates issued for them, is appended to these regulations.

In regard to the loan of 1842, measures have been taken to call in all the certificates for sums above two hundred dollars, in which the amount is expressed in *writing*, with the view of having no certificates of that description in circulation, except such as are for sums between one hundred dollars and two hundred dollars. No transfer will be sanctioned for any fractional part of one hundred dollars of any loan, except of the loan of 1842, where the certificate was originally issued for such fraction; and of the Mexican indemnity loan.

## TRANSFERS OF STOCK.

1. All transfers of stock, other than coupon certificates, must be made on the books of the Treasury in the Register's office, and none can be made within thirty days before the first day of January and the first day of July, except the Mexican indemnity.

2. The certificate to be transferred, or of which any part is to be transferred, must be produced at the office of the Register of the Treasury, in order that the same may be cancelled, and that such new certificates may be issued as the case may require. No certificate can be issued for less than one hundred dollars, except in the loans of 1847 and 1848, and the Mexican indemnity.

3. The party, in whose favor a certificate was issued, may appear in person, at the Register's office, and there execute an assignment of the certificate, or any portion of the amount for which it was issued, with directions to transfer the same to the assignee.

4. The following form of a transfer is recommended: "For value received, . . . . . do hereby assign unto . . . . . the within certificate of stock, and do hereby authorize the Register of the Treasury to transfer it on the books of the Department.

"Dated . . . . .

"Executed in presence of . . . . ."

Where it is intended to transfer a portion only of any certificate, the assignment will vary accordingly, by saying, "one thousand dollars, (or whatever may be the portion assigned,) part of a certificate of stock," etc., and authorizing the Register to transfer "one thousand dollars of the said stock," etc.

When a certificate is to be divided among several persons, the assignment will name them, and the respective portions to be transferred to each.

When a portion of a certificate is left without being assigned, a new one will be issued for the part so reserved to the owner thereof. It is desirable that the assignment should, in all cases, *be upon the certificate. The blanks must be filled up.*

It is to be signed by the person whose name is in the certificate as the payee; if it be the name of a firm, then by one of such firm in its name; and if there be several persons, then by all of them, except in cases of trustees, executors, etc., when, by law, any one has the authority to dispose of such property.

5. Note.—The execution of the above assignment, when not made at this Department, must be witnessed by a United States Judge, District Attorney, or Clerk, or a Collector of the Customs, United States Treasurer, or Assistant, an American Minister abroad, United States Consul, or a Notary Public. If witnessed by either of the two latter, his official seal must be attached. In all cases the witness must add his official designation and residence. If assigned by a corporation, it must be described as the assignor. When it has not been previously done, evidence of the official character of the person signing must be furnished, as that he is President or Cashier of a bank, and also proof of his authority to make the assignment. Executors, administrators, and trustees, where the stock stands in the name of the person they represent, must furnish legal evidence of their official characters to be filed.

It is desirable that these certificates should be written upon the loan certificate.

6. The party entitled to assign a certificate may constitute an attorney for that purpose, by a power which must be executed before some officer or person, before whom the assignment might be executed by the preceding regulation, and who must, in like manner, certify to the identity of the party executing such power. The assignment may then be executed by such attorney, in the same manner as above provided, in respect to the constituent, and a like certificate of the identity of the attorney must be given.

An assignment may be executed by a resident of a foreign country before a notary public of such country, and a power of attorney to make such assignment, may be executed before any officer of that description, before whom the attorney may also execute the transfer.

When not contrary to the laws of the country, assignments and powers executed before any public minister, or consul of the United States, and certified by him in the manner provided, will be sufficient. In special cases of bodily infirmity causing an inability to attend in person before the proper officer, duly established by affidavits proving such bodily infirmity and the identity of such assignor, under oath, by two witnesses certified to be credible by the officer before whom they are sworn, proof will be received, and, if entirely satisfactory, the assignment will be allowed.

7. When the assignment is executed at any other place than the Treasury, it must be transmitted to the Register, for the purpose of having the transfer completed on the books. The new certificates will be returned to the person who forwarded the assignments.

8. The assignee will in all cases designate on the certificate to be assigned, or in a separate communication, the depository of the Treasury at which he desires to have the interest paid. The pay agents selected for that purpose at this time are at Boston, New York, Philadelphia, Baltimore, Washington, Charleston, S. C., and New Orleans.

9. In case of the decease of a stockholder, a transfer of his stock must be made either by his executor or administrator, or by the person to whom such stock has been devised; or who, by the laws of the country in which the stockholder resided at the time of his death, has succeeded to the ownership thereof, or who, under such laws, has the right to take possession of such stock.

10. In case the stockholder, at the time of his death, was a resident of the United States, his executor or administrator must produce an exemplified copy of the letters of administration or letters testamentary, or a certificate of the fact of such letters having been issued by the officer from whose office the same were granted, under his hand and seal. If the applicant claims the stock as devisee, or as having succeeded to the rights of the holder, he must produce the decision of some competent tribunal to that effect, duly exemplified under its seal, that the decree or judgment was rendered by the proper tribunal.

11. In case the stockholder, at the time of his death, was a resident of any foreign country, the person claiming the

right to direct the transfer of such stock must produce the evidence of such right, as follows:

If he claims as executor or administrator, or as having been appointed to take charge of the personal estate of such deceased stockholder, he must produce a copy of the instrument giving him such authority, duly exemplified, or having a probate act or certificate endorsed thereon of the proper officers, setting forth that such instrument had been duly proved, specifying the court in which, and the day when, such proof was made, and duly exemplified under the hand and seal of the officers from whose office the original was issued, accompanied by a certificate of the American minister or a consular agent of the United States in such country; or if there be none, of a notary public, to the effect that the officer granting such authority had jurisdiction of the subject by the laws of such country, and that the exemplified copy is by the proper officer, and in due form.

If the claim be on the ground that the stock has been devised to the applicant, or that he has succeeded as a relative to the rights of any deceased person in any certificate of stock, a decision of the competent tribunal of the country establishing the right of such applicant must be produced, duly exemplified or authenticated under its seal, and by the signatures of its officers, and accompanied by the certificate of some officer enumerated in the preceding paragraph, to the effect that such decision was pronounced by a tribunal which, at the time, by the laws of the country, had jurisdiction of the subject and authority to make such decision, and that the copy of the decree or judgment of such tribunal is duly authenticated by the proper officer.

12. No charge is made for effecting the transfer of any stock. The only expenses are those incurred in authenticating the necessary papers previous to their presentation.

13. The new certificate issued upon a transfer of stock will bear interest from the first day of the half year in which such transfer is made, and interest will be paid to the assignee for the whole of that half year. If any interest has accrued prior to the first day of such half year, it will be paid only to the person who was the holder of the stock at the time such interest accrued.

#### PAYMENT OF INTEREST.

14. The interest on all certificates of stock issued for any loan made in behalf of the United States, will be paid in specie or its equivalent, by the pay agent of the Treasury designated for that purpose, unless otherwise requested

in writing, at least thirty days before such interest is payable.

15. To obtain the payment of interest, it will not be necessary to produce the certificate of stock, unless required by the pay agent, by whom such interest is to be paid, when there is a doubt of the identity of the party applying.

16. Interest will be paid to the person entitled to receive it on his signing a receipt therefor, or upon his letter of attorney acknowledged or proved in the same manner, and before one of the officers authorized to certify to the execution of an assignment of stock, specified in regulation No. 5.

An assignment by a bank or other corporation, if subscribed by the president and cashier, or other proper officers in their official capacity, and attested by the seal of the corporation, will be deemed sufficient to transfer its interest.

#### COUPON BONDS.

17. The Coupon bonds issued under the acts of 1842 and 1843, will continue to be, as they have heretofore been, transferable by "endorsement and delivery," and a blank endorsement by the payee will be regarded as valid in the hands of any person presenting the certificate. Persons desirous of avoiding accidents that may arise from that cause can do so by taking special endorsements.

The Coupon bonds issued under the act of 1848, when payable to "assigns," are transferable by "endorsement and delivery," and a blank endorsement by the payee places "the stock in the hands of the holder, with the same title in all respects as if it had been made in the first instance payable to bearer." Such stock is thenceforth transferable by delivery with or without endorsement; and when the certificates thereof are produced at the Treasury for payment, they will be paid to the holder, provided the endorsement or endorsements upon them are known or proved to the satisfaction of the Department to be genuine. It is, however, recommended that in all cases hereafter when these certificates shall be endorsed, whether specially or in blank, the execution thereof be attested in the same manner as is prescribed on the first page of these regulations for the assignment of transferable stock. Such attestation is not *required* by the Department, as the certificates will be paid when presented for that purpose at the Treasury, provided the endorsement or endorsements thereon are known by, or proved in any manner to the satisfaction of, the Department to be genuine. The same remark will apply to the Coupon bonds of 1842 and 1843.



The Coupon bonds of 1848 which are payable to bearer, are transferable by delivery, with or without endorsement.

18. An affidavit of ownership will be required in all cases where the attestations by witnesses of the assignment or endorsement is not made.

19. A statement of the Coupons to be made will be furnished to the government agent at Washington, who will pay them semi-annually, as they become due.

#### LOST CERTIFICATES.

20. All applications made to the Treasury for renewal of certificates of stock, lost or destroyed, must be accompanied by the following documents:

A statement on oath or affirmation by the applicant, showing the time, place, and all other circumstances attending the loss or destruction of the certificate, with its number, date, amount, the rate of interest it bears, the time to which interest, if any, has been paid, in whose favor it was issued, when made payable, together with every other particular relating to it, within the knowledge of the applicant.

21. An instrument in writing, to be signed by the applicant, with two sureties, reciting the particulars hereinbefore specified, by which such applicant and his sureties shall jointly and severally agree to pay to any person who may establish a valid claim to the certificates so alleged to have been lost or destroyed, the full value thereof on demand, with interest until paid, and also to pay to the United States any sum which shall appear to have been erroneously paid to such claimant, pursuant to the said application, with interest until paid. Such instrument is to be executed in the presence of a judge or district attorney of the United States, or a judge of a supreme or superior court of any State, by whom the sufficiency of the sureties, in double the amount claimed, must be certified.

22. A copy of a public advertisement of the loss or destruction of a certificate made by the party in a newspaper published at or near the place of such loss or destruction, accompanied by the affidavit of the printer or publisher of the same, that the said advertisement had been inserted in the said paper for six consecutive weeks.

#### REGULATIONS RELATIVE TO THE PAYMENT OF ALL UNCLAIMED DIVIDENDS.

23. All receipts for money must be made on the books of the Register's office, so that the same record which shows the debt may also show its payment.

Payment will be made to the claimant in person, or to his attorney, on signing a receipt upon the proper book.

24. Payment will also be made to an executor, or administrator, or to his attorney, but in no case to children or heirs, as such.

If applied for by an executor, he must produce a copy of the will certified to have been duly proved under the hand and seal of the probate court before which it was proved, or a certificate under the hand and seal of said court, that such will had been duly proved, and that such person had been duly appointed executor, and had qualified.

If applied for by an administrator, he must produce the letters of administration duly granted by a probate court, or a copy thereof under the hand and seal of said court, or a certificate by said court under its hand and seal, certifying that such person had been duly appointed administrator.

25. All powers of attorney should refer to the loan office, or agency from which the dividend was returned to the Treasury, and must be witnessed by one or more witnesses, stating his place of residence, and be also duly acknowledged or proved before a notary public, to be certified under his hand and official seal, or before a justice of the peace, whose signature shall be certified to be genuine under the hand and seal of the clerk of the court, and that such justice is in commission and authorized to act. Said powers of attorney may also be acknowledged before an United States judge, or district attorney, collector of the customs, member of Congress, or assistant Treasurer, who must state that he personally knows the person making the acknowledgment.

26. Persons wishing to ascertain whether any sums are standing to their credit on the books of the Register's office, or to the credit of their testator, or intestate, or ancestor, can receive accurate information, without charge, by addressing letters to the Register of the Treasury, stating the name, age, residence, and calling of the person to whom the claim originally belonged; and if dead, when and where he died; and stating, in addition, who are his executors or administrators, and their residence. When requested, they will also be furnished with printed forms, and instructions for drawing what may be due.

#### MEXICAN INDEMNITY LOAN.

27. This stock is issued upon the owners assigning to the United States the fourth and fifth instalments of the Mexican indemnity certificates. Stock is issued to the owners for

their pro rata share of the \$320,000 provided by Congress for this purpose, which amounts to  $15\frac{87}{110}$  per cent. on the amount of the original certificate.

On this loan the interest is payable on the tenth days of February and August, at the city of Washington. For thirty days before those dates, the stock is not transferable. The sums in these certificates are written. Blank powers of attorney for making assignment of the 4th and 5th installments are furnished at this office. Stock will not be issued in favor of parties claiming under blank assignments of the indemnity certificates. When assignments are not witnessed by the officers mentioned in article No. 5 above, there must be an unequivocal affidavit of ownership by the party claiming to be owner, before it will be considered.

#### LOAN OF 1847.

28. The law of January 28, 1847, authorizes Treasury notes or stock, or both, to be issued to the amount of \$23,000,000. It also authorizes the funding of all Treasury notes issued, or authorized to be issued, by any prior law. Under the act of July 22, 1846, \$5,000,000 were issued. On the first of February, 1847, there were outstanding notes of all other issues \$367,930. Total stock authorized by the act of 28th January, 1847, \$28,367,930. This stock is redeemable after 1867.

#### MODE OF CONVERTING TREASURY NOTES INTO STOCK.

20. The holder of Treasury notes must call at the office of the Treasurer, or Assisting Treasurer, and obtain blank receipts and schedules to be filled up. This must be done with perfect accuracy. The notes and receipt will then be presented to the Treasurer, or Assistant Treasurer, who will then compare the schedule with the notes. When found correct, it will be copied into his books, and a duplicate prepared. When all is complete, he will pay the interest in money, and sign the schedule for the depositor. At the same time he will take from him an admission of the correctness of the schedule, and of the payment of the interest. The depositor should then state, at the bottom of the schedule, to whom the stock is to be issued, and send it to the Register of the Treasury, with a letter of instructions, stating to whom the stock is to be issued, the denomination of certificates preferred, and where the interest is to be made payable.

30. Statement showing the amounts, dates of redemption, and denominations of certificates of the United States loans :

Amount of loan.	Date of act authorizing it.	When redeemable.	Denomination of certificates.
\$3,343,896 00	April 15, 1842	31st Dec. 1862	100, 500, 1,000, 3,000, 5,000, 10,000. Coupon Bonds of 1,000, 3,000 and 5,000.
7,004,231 35	March 3, 1843	1st July, 1853	100, 500, 1,000, 3,000, 5,000, 10,000. Coupon Bonds of 1,000, 3,000 and 5,000.
5,000,000 00	Jun'y 22, 1846	12th Nov. 1856	100, 500, 1,000, 3,000, 5,000.
320 000 00	August 10, 1849	10th August, 1851	In blank.
*23,000,000 00	January 23, 1847	1st Jan. 1868	50, 100, 200, 300, 500, 1,000, 2,000, 3,000, 5,000, 10,000.
16,000,000 00	March 31, 1848	1st July, 1868	50, 100, 200, 300, 500, 1,000, 2,000, 3,000, 5,000, 10,000. Coupon Bonds of 1,000, 3,000, 5,000, 10,000.

\*Authorized ; and also pending \$5,000,000 Treasury notes issued under act of July 22, 1840, and \$367,930, issued prior thereto.

LETTERS AND COMMUNICATIONS.

31. Each letter and communication to this office *should* be folded and *enclosed in a wrapper*. Persons wishing to communicate on the subject of more than one loan *at the same time*, are requested to do so by separate letters. Assignments and signatures to letters should be written as *legibly as possible*, to prevent mistakes.

32. When the officers of an institution, or the members of a firm transacting business with this office, are changed, it is very desirable that evidence thereof, in due and authentic form, be communicated without delay, with a specimen of the authentic signature of the new officers or members. All letters concerning loan certificates should be addressed to the Register.

ALLEN A. HALL,  
*Register of the Treasury*

Approved :  
WM. M. MEREDITH, *Secretary of the Treasury.*

## PUBLIC LANDS AND ACTUAL SETTLERS.

AN ACT to graduate and reduce the price of the Public Lands to actual settlers and cultivators.

APPROVED, AUGUST 4, 1854.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That all of the public lands of the United States which shall have been in market for ten years or upwards, prior to the time of application to enter the same, under the provisions of this act, and still remaining unsold, shall be subject to sale at the price of one dollar per acre; and all of the lands of the United States that shall have been in market for fifteen years or upwards, as aforesaid, and still remaining unsold, shall be subject to sale at seventy-five cents per acre; and all of the lands of the United States that shall have been in market for twenty years or upwards, as aforesaid, and still remaining unsold, shall be subject to sale at fifty cents per acre; and all of the lands of the United States that shall have been in market for twenty-five years and upwards, as aforesaid, and still remaining unsold, shall be subject to sale at twenty-five cents per acre; and all lands of the United States that shall have been in market for thirty years or more, shall be subject to sale at twelve-and-a-half cents per acre: *Provided*, This section shall not be so construed as to extend to lands reserved to the United States, in acts granting lands to States for railroad or other internal improvements, or to mineral lands held at over one dollar and twenty-five cents per acre.

SEC. 2. *And be it further enacted*, That upon every reduction in price under the provisions of this act, the occupant and settler upon the lands shall have the right of pre-emption at such graduated price, upon the same terms, conditions, restrictions, and limitations, upon which the public lands of the United States are now subject to the right of pre-emption until within thirty days preceding the next graduation or reduction that shall take place; and if not so purchased, shall again be subject to the right of pre-emption for eleven months, as before, and so on from time to time, as reductions take place: *Provided*, That nothing in this act shall be construed as to interfere with any right which has or may accrue by virtue of any act granting pre-emption to actual settlers upon public lands.

SEC. 3. *And be it further enacted*, That any person applying to enter any of the aforesaid lands shall be required to make affidavit, before the register or receiver of the proper land

office, that he or she enters the same for his or her own use, and for the purpose of actual settlement and cultivation, or for the use of an adjoining farm or plantation owned or occupied by him or herself, and, together with said entry, he or she has not acquired from the United States, under the provisions of this act, more than three hundred and twenty acres, according to the established surveys; and if any person or persons taking such oath or affidavit shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury.

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### C I R C U L A R ,

TO THE REGISTER3 AND RECEIVERS OF THE UNITED STATES LAND OFFICES.

GENERAL LAND OFFICE,

*August 30, 1854.*

GENTLEMEN:—Annexed is a copy of the act of Congress, entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," approved August 4, 1854.

This act takes effect from its passage. It applies to all lands except those "reserved to the United States, in acts granting lands to States for railroad or other internal improvements, or to mineral lands, held at over one dollar and twenty-five cents per acre;" and except also lands reserved from sale by act of Congress, order of the President, or which may have been appropriated for any purpose whatever. Lands which are required by treaty stipulations to be sold for the benefit of Indians, are also excluded from the provisions of this law.

Lands subject to the operation of this act are also subject to pre-emption, at the graduated price, under the provisions of the act of September 4, 1841. Where settlers claim any of these lands by pre-emption, under that law, they must file their declaratory statements, prove up their rights, and make payment at the graduated price within the time prescribed by the said act, except towards the close of each period of graduation, when they must be paid for within thirty days preceding the next graduation or reduction that shall take place, or forfeit their claim, even if the year allowed by the act of 1841 has not expired; and the lands settled on by them will be subject to private entry. If not purchased as private entry, however, before the next graduation or reduction has taken place, such lands will again be subject to pre-emption as aforesaid at such reduced price.

This act provides, however, that nothing in it "shall be so construed as to interfere with any right which has or may accrue by virtue of any act granting pre-emption to actual settlers upon public lands." Therefore, any right of preference which may have attached, or may hereafter attach, under the act of May 27, 1854, entitled "An act for the relief of settlers on lands reserved for railroad purposes," may be paid for *at the graduated price*, within the time prescribed by the said act of 1854, except towards the close of each period of graduation, when they must be paid for within thirty days preceding the next graduation or reduction, or the claim be forfeited.

All such claims, however, under the law of 1841, as well as that of 1854, preferred towards the *close of each period* of graduation, which shall not have been consummated or entered under the act of August 4, 1854, may be paid for and entered subsequently during the period allowed by said acts of 1841 and 1854, but at the usual minimum of *one dollar and twenty-five cents per acre*.

Any person may enter lands subject to the operations of this act at the graduated price on making affidavit, before the Register or Receiver of the proper land office, that he or she enters the same for his or her own use, and for the purpose of actual settlement and cultivation, or for the use of an adjoining farm or plantation owned or occupied by him or herself, and together with said entry he or she has not acquired from the United States, under the provisions of this act, more than three hundred and twenty acres, according to the established surveys.

All entries, by pre-emption or otherwise, under the provisions of this act, must be in a compact body by legal subdivision of tracts adjacent and contiguous, the same as under the pre-emption act of 1841, except where the land is claimed for the use of an adjoining farm or plantation, when it must form with such farm or plantation a compact body as aforesaid. All lands not returned under the provision of this act as pre-emptions for actual settlement and cultivation, or as a constituent part of a farm or plantation, will be subject to the laws regulating the sale or location of lands at the ordinary minimum price of one dollar and twenty-five cents per acre.

Where parties apply to locate warrants or scrip on any of the lands graduated under the provisions of this act, they can locate no more than is called for by the face of the warrants or scrip; that is, a forty-acre warrant or scrip can only take a forty-acre tract or its equivalent; an eighty-acre

warrant can take an eighty acre, or two contiguous and adjacent forty-acre tracts forming a compact body of eighty acres; and so on, without reference to the price.

To prevent confusion and simplify the business as much as possible, it has been determined not to reckon fractions of years—the fiscal year governing. Hence, all lands, offered say from July 1, 1840, to July 1, 1845, will be regarded as coming within the first class under this law; those offered between July 1, 1845, and July 1, 1846, will not fall within the second class till July 1, 1855; and so on in the other classes.

Great care and attention must be given to this matter to prevent errors, and all entries claimed under this act since its passage, and in accordance with its provisions, must be adjusted as above directed.

The testimony in all cases under this act will be transmitted to this office with certificates of entry.

Very respectfully,

Your obedient servant,

JOHN WILSON.

*Commissioner.*

REGISTER AND RECEIVER

*at*



## TERMINATION OF THE REVOLUTIONARY WAR.

The Revolutionary War terminated on the 11th<sup>th</sup> April, 1783, as will appear by the following opinion of the Attorney General, of February 12, 1825. The service of those War's-men, who entered service before April, 1783, is allowed up to September 3, 1783, the day of the definitive treaty of peace.

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THE REVOLUTIONARY WAR did not terminate until April, 1783, upon the ratification of the treaty of peace, which determines revolutionary pensions thereon depending.

OFFICE OF THE ATTORNEY GENERAL,  
*February 12, 1825.*

SIR: By the act of the 18th March, 1818, it is declared every commissioned officer, private, etc., who served in the war of the Revolution until the end thereof, or for the term of nine months or longer, at any period of the war, shall receive a pension during life. The question which you propound for my opinion is, when the war of the Revolution terminated within the contemplation of this act—"whether at the period of the actual cessation of hostilities in November, 1782, when the preliminaries of peace were agreed on; or whether at the period of the ratification of the treaty of peace in April, 1783?"

I apprehend that there must be an error in the statement of the first question: that is, in assuming the date of the preliminary articles as the period of the actual cessation of hostilities. Those articles themselves, in their title, provide that the treaty, into which they are to be introduced, is not to take effect until terms of peace shall be agreed on between Great Britain and France, and his Britannic Majesty shall be ready to conclude such treaty accordingly. The 7th provisional article stipulates "that there shall be a firm and perpetual peace between his Britannic Majesty and the States, and between the subjects of the one and the citizens of the other; wherefore all hostilities, both by sea and land, shall *then* immediately cease." When? When the terms of a peace shall be agreed on between Great Britain and France, and his Britannic Majesty shall be ready to conclude such treaty accordingly. On the 20th of January, 1783, the preliminary articles of peace between France and Great Britain were signed; by the 1st article of which it is provided, that as soon as the preliminaries are signed *and ratified*, sincere

friendship shall be re-established between his Most Christian Majesty and his Britannic Majesty, their kingdoms, etc. The 2d article provides what prizes taken in what parts of the world, respectively, within given times after the exchange of ratifications, shall be restored.

On the same day (20th January, 1783) an armistice, declaring a cessation of hostilities between the United States and Great Britain, was signed at Versailles. There had been no cessation thereof previously; and this instrument places the cessation on the same footing as the preliminary articles between Great Britain and France: that is to say, provides that the United States shall be included in the stipulation between the two Crowns and Great Britain and Spain; and "that they shall enjoy the benefit of the cessation of hostilities at the same epoch and in the same manner." Again: the articles signed on the 30th November do not, upon their face, import *present* peace—they are *provisional* merely, *preparatory to a peace*. These articles, too, were yet to be submitted to Congress for *ratification*; and they were not ratified until April, 1783.

Upon the whole, I am of the opinion that war existed until the treaty of peace was ratified; or, in other words, that the war of the Revolution did not terminate till April, 1783.

I remain, sir, very respectfully, your obedient servant,

WM. WIRT.

To the SECRETARY OF WAR.

**EVIDENCE OF MILITARY SERVICE****IN THE WAR OF THE REVOLUTION.**

**REGULAR ARMY.**—Rolls of the Regular Army, serving in the war of the Revolution, are to a great extent on file in the Pension Office, and are referred to by the office in adjusting the claims of officers and others who served in the Regular Army in that war.

**MILITIA, ETC.**—There are but few rolls of the State troops, volunteers, or militia, on file in the Pension Office. It is believed that most of the rolls, showing militia service, have been destroyed, or are in possession of the officers of the different States, or the families of officers who served in the war.

It is deemed almost impossible, at the present time, to obtain parol evidence of the service of officers and others in the Revolution; and but few are aware of the only proper mode of obtaining record evidence, when it does not exist in the Pension Office. The following suggestions may be of assistance to persons desirous of obtaining record evidence of service in the State troops, volunteers, and militia of the various States.

**CONNECTICUT.**—Application for evidence of service rendered in the troops or militia of Connecticut, should be made to the "Comptroller of Connecticut," at Hartford, by letter, which should give all the information possessed by the party making the inquiry, relative to the service, and the names of the officers under whom it was rendered. His fees are one dollar for a search, and an additional one dollar in case a certificate is furnished. Such certificate, filed in the Pension Office, is received as evidence of service.

**GEORGIA.**—Application for evidence of service, rendered in the troops or militia of Georgia, should be made by letter to the "Secretary of the Executive Department of Georgia," at Milledgeville, Georgia. There is in his office a "Record-book" of Revolutionary soldiers. This book was compiled by authority of the Legislature of Georgia, from original written evidence of service existing in his office. The original discharges, certificates, etc., have been classified and arranged.

It embraces about two hundred names of the continental troops. The same book contains a list of the "State Militia" or "minute-men" called out to defend the frontiers and do such service as exigencies might demand.

He has also a list of "Refugees," or men compelled to flee the State on account of British and Tory hostilities, and also a list of those serving in the Navy.

Fees for certificate of service depend upon the labor required. Such certificate is received as evidence.

**MARYLAND.**—Application for evidence of service rendered in the troops or militia of Maryland, in the war of the Revolution, should be made by letter, addressed to the "Register of the Land Office of Maryland," at Annapolis, Maryland. There are in his office records of the service of seven regiments on continental line, from December 10th, 1776, to November 18th, 1783, with muster and pay rolls, and records of Bounty Land. Papers relating to Militia service, Barges on duty in the Chesapeake, Flying Camp, etc., are in loose bundles and can only be examined with great labor. There is no particular form of application for his certificate. His fees for certificates are from *fifty to seventy-five cents* each.

**MASSACHUSETTS.**—Application for evidence of service rendered in the troops or militia of Massachusetts, in the war of the Revolution, should be made by letter, addressed to the "Secretary of Massachusetts," at Boston, Massachusetts. He has in his office imperfect rolls of the continental and State troops and militia. The following regulations and form of application have been adopted by the Secretary, which must be complied with by persons desiring an examination of the Revolutionary rolls in his office, viz.:

1. Every application, requiring search, or certificate, must be made to the Secretary, in writing, by the claimant, or by some person duly authorized by the claimant; and the signature to the application must be attested by some magistrate.
2. In all cases where the application is made by any person other than the claimant, *a power of attorney, attested by a magistrate*, authorizing such person to act in the claimant's behalf, *must accompany* the application.
3. The application must set forth, as fully as the circumstances of the case will allow, the residence and service of the soldier, and the names of the officers under whom he served; and no search will be made until after the filing of such written application.

**APPLICATION FOR CERTIFICATE OF REVOLUTIONARY SERVICES**  
*made by the..... of the party who rendered the service.*

STATE OF..... }  
 COUNTY OF..... } ss.  
 TOWN OF..... }

The Secretary of the Commonwealth of Massachusetts is hereby requested to furnish evidence, from the Rolls in his office, of the service of..... in the war of the Revolution.

He was a native of the town of....., in the County of....., and State of.....

He enlisted from the Town of....., in the County of....., and State of....., in the year 17...., as a..... in the Company commanded by Captain....., in..... Regiment....., and he served as follows, (*Here describe as fully as may be, the length of service, the rank, &c., of the claimant, or the capacity in which he served, and all other particulars known,*) viz.: .....

I am now..... years old, and my memory does not enable me to state the services more fully than above stated.

WITNESS my hand, this..... day of....., A. D. 18.....

Signed by said..... }  
 in my presence,..... }  
 ..... J. P. }

**NEW YORK.**—Application for evidence of service rendered in the State troops, or militia, of the State of New York, in the war of the Revolution, should be made by letter, addressed to the “Comptroller of the State of New York,” at Albany, N. Y. All the evidence possessed by the State, relating to services rendered in the Revolution, is in the office of the Comptroller, and in that of the Secretary of the State. These records are imperfect. Persons desiring searches must give the name of the soldier sought for, and rank, if an officer; the names of the officers under whom the duty was performed; the character of the service, whether in the regular line or militia, should be given, if possible. The fee required for each search, in both offices, is *one dollar*. That sum, accompanying the requisition made to the Comptroller, will secure searches and certificates from both offices.

**NEW JERSEY.**—Application for evidence of service rendered in the State troops, or militia, of the State of New Jersey, in the war of the Revolution, should be made by letter, addressed to the “Secretary of the State of New Jersey,” at Trenton, N. J. The evidence of service of militia during the Revolution, preserved in his office, is the record of moneys paid by authority of a State law, in 1784, for depreciation of soldiers’ pay, etc. “Commissioners were appoint-

ed in each county, to make settlement for this, with all who had performed service, and claimed allowance; in pursuance of which a very large amount was paid, in sums ranging from a few shillings to fifty pounds." He has a few militia rolls, but generally the rolls were transmitted to the central government at the close of the war, and were destroyed when the Capitol was consumed in 1814. He has the complete rolls of the "New Jersey Brigade," from 1777 to 1781, and the names of many of the captains and other officers in active service.

**NEW HAMPSHIRE.**—Application for evidence of service rendered in the State troops, or militia, of the State of New Hampshire, in the war of the Revolution, should be made by letter, addressed to the "Secretary of the State of New Hampshire," at Concord, N. H.

**NORTH CAROLINA.**—Application for evidence of service rendered in the State troops, or militia, of the State of North Carolina, in the war of the Revolution, should be made by letter, addressed to the "Comptroller of North Carolina," at Raleigh, N. C.

**PENNSYLVANIA.**—Application for evidence of service rendered in the State troops, or militia, of the State of Pennsylvania, in the war of the Revolution, should be addressed to the "Auditor-General of the State," at Harrisburgh, Pa. The evidence in his office of the service of the troops, militia, etc., consists of records of payments made to them by the State. There is no form of application used, but the full name of the person rendering the service, and all the information as to his regiment, officers, etc., that can be given, is required. The fees are regulated by the amount of writing necessary, from *one dollar to five dollars*. No fee required unless a certificate is furnished.

**RHODE ISLAND.**—The rolls of the State troops, militia, etc., of the State of Rhode Island, serving in the war of the Revolution, were transferred by the Secretary of the State to the War Department in Washington, and are supposed to have been destroyed by fire. There is no evidence of service or payment of the State troops or militia, in any of the State offices.

BENJAMIN COWELL, Esq., of Providence, R. I., has in his possession a large number of the rolls showing Revolutionary service, which have been mostly collected from the families of the officers who served in the war, and are by far more numerous than can be found in the archives of the State. Mr. Cowell, upon application for a certificate, furnishes one under oath, in case he finds the service. His certificate will prove service, but not identity, as his rolls do not specify residence, etc. His fee for certificates, which includes magistrate's fees and authentication by Secretary, is *five dollars*. A work, entitled "Spirit of '76," published by Mr. Cowell, a few years since, will afford much valuable information to parties interested in the Revolutionary history of his State.

**SOUTH CAROLINA.**—Application for evidence of service rendered in the State troop and militia, of the State of South Carolina, in the war of the Revolution, should be addressed to the "Comptroller-General," Columbia, South Carolina. The records of his office show most of the militia, and part of the continental service performed in that State during the war. The application should contain such information relative to the service, names of officers, etc., as can be given. The fees are: for indent and account, *two dollars*; for indent (where account is missing), *one dollar*.

**VIRGINIA.**—Applications for evidence of service rendered in the Virginia continental or State line, in the war of the Revolution, should be addressed to the "Auditor of Public Accounts," at Richmond, Va. The only records, or very nearly so, of the service of Revolutionary soldiers, in his office, are the *lists* of payments or settlements, with those belonging to the *continental* or State lines. These lists show the *name* of the party, *rank* and *amount*, for which a certificate of indebtedness on the part of the State was delivered. Any person who is an heir or descendant of the party, whose claim is about to be investigated, will be furnished with all the information found in the office relative thereto. An attorney or agent, asking information, must forward a power of attorney, or, if his power has been filed in the Pension Office, he should send a certificate of that fact. No fees are required.

**PART V.**

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**LAWS OF THE UNITED STATES**

**RELATING TO PATENTS, &c.,**

**TOGETHER WITH**

**THE RULES AND FORMS PRESCRIBED FOR THE TRANSACTION  
OF BUSINESS AT THE PATENT OFFICE.**





## ACTS OF CONGRESS RELATIVE TO PATENTS.

AN ACT to promote the progress of the Useful Arts, and to repeal all acts and parts of acts heretofore made for that purpose.

APPROVED, JULY 4, 1836.

**SEC. 1.** *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be established and attached to the Department of State an office to be denominated the Patent Office, the chief officer of which shall be called the Commissioner of Patents, to be appointed by the President, by and with the advice and consent of the Senate, whose duty it shall be, under the direction of the Secretary of State, to superintend, execute, and perform all such acts and things touching and respecting the granting and issuing of patents for new and useful discoveries, inventions, and improvements, as are herein provided for, or shall hereafter be, by law, directed to be done and performed, and shall have the charge and custody of all the books, records, papers, models, machines, and all other things belonging to said office. And said Commissioner shall receive the same compensation as is allowed by law to the Commissioner of the Indian Department, and shall be entitled to send and receive letters and packages by mail, relating to the business of the office, free of postage.

**SEC. 2.** *And be it further enacted,* That there shall be in said office an inferior officer, to be appointed by the said principal officer, with the approval of the Secretary of State, to receive an annual salary of seventeen hundred dollars, and to be called the chief clerk of the Patent Office, who, in all cases during the necessary absence of the Commissioner, or when the said principal office shall become vacant, shall have the charge and custody of the seal, and of the records, books, papers, machines, models, and all other things, belonging to the said office, and shall perform the duties of Commissioner during such vacancy. And the said Commissioner may also, with like approval, appoint an examining clerk, at an annual salary of fifteen hundred dollars; two other clerks, at twelve hundred dollars each, one of whom shall be a competent draughtsman; one other clerk, at one thousand dollars; a machinist, at twelve hundred and fifty dollars; and a messenger, at seven hundred dollars. And said Commissioner,

clerks, and every other person appointed and employed in said office, shall be disqualified and interdicted from acquiring or taking, except by inheritance, during the period for which they shall hold their appointments, respectively, for any right or interest, directly or indirectly, in any patent for an invention or discovery which has been, or may hereafter be, granted.

SEC. 3. *And be it further enacted*, That the said principal officer, and every other person to be appointed in the said office, shall, before he enters upon the duties of his office or appointment, make oath or affirmation truly and faithfully to execute the trust committed to him. And the said Commissioner and the chief clerk shall also, before entering upon their duties, severally give bonds, with sureties, to the Treasurer of the United States, the former in the sum of ten thousand dollars, and the latter in the sum of five thousand dollars, with condition to render a true and faithful account to him or his successor in office, quarterly, of all moneys which shall be by them respectively received for duties on patents, and for copies of records and drawings, and all other moneys received by virtue of said office.

SEC. 4. *And be it further enacted*, That the said Commissioner shall cause a seal to be made and provided for the said office, with such device as the President of the United States shall approve; and copies of any records, books, papers, or drawings, belonging to the said office, under the signature of the said Commissioner, or, when the office shall be vacant, under the signature of the chief clerk, with the said seal affixed, shall be competent evidence in all cases in which the original records, books, papers, or drawing, could be evidence. And any person making application therefor may have certified copies of the records, drawings, and other papers deposited in said office, on paying, for the written copies, the sum of ten cents for every page of one hundred words; and for copies of drawings, the reasonable expense of making the same.

SEC. 5. *And be it further enacted*, That all patents issued from said office shall be issued in the name of the United States, and under the seal of said office, and be signed by the Secretary of State, and countersigned by the Commissioner of the said office, and shall be recorded, together with the descriptions, specifications, and drawings, in the said office, in books to be kept for that purpose. Every such patent shall contain a short description or title of the invention or discovery, correctly indicating its nature and design, and in its terms grant to the applicant or applicants, his or their heirs,

administrators, executors, or assigns, for a term not exceeding fourteen years, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention or discovery, referring to the specifications for the particulars thereof, a copy of which shall be annexed to the patent, specifying what the patentee claims as his invention or discovery.

SEC. 6. *And be it further enacted*, That any person or persons having discovered or invented any new and useful art, machine, manufacture or composition of matter, or any new and useful improvements on any art, machine, manufacture, or composition of matter, not known or used by others before his or their discovery or invention thereof, and not, at the time of his application for a patent, in public use or on sale, with his consent or allowance, as the inventor or discoverer, and shall desire to obtain an exclusive property therein, may make application in writing to the Commissioner of Patents, expressing such desire, and the Commissioner, on due proceedings had, may grant a patent therefor. But before any inventor shall receive a patent for any such new invention or discovery, he shall deliver a written description of his invention or discovery, and of the manner and process of making, constructing, using, and compounding the same, in such full, clear and exact terms, avoiding unnecessary prolixity, as to enable any person skilled in the art or science to which it appertains, or with which it is most nearly connected, to make, construct, compound and use the same; and, in case of any machine, he shall fully explain the principle, and the several modes in which he has contemplated the application of that principle, or character by which it may be distinguished from other inventions; and shall particularly specify and point out the part, improvement, or combination, which he claims as his own invention or discovery. He shall, furthermore, accompany the whole with a drawing or drawings, and written references, where the nature of the case admits of drawings; or with specimens of ingredients, and of the composition of matter, sufficient in quantity for the purpose of experiment, where the invention or discovery is of a composition of matter; which descriptions and drawings, signed by the inventor, and attested by two witnesses, shall be filed in the Patent Office; and he shall, moreover, furnish a model of his invention, in all cases which admit of a representation by model, of a convenient size to exhibit advantageously its several parts. The applicant shall also make oath, or affirmation, that he does verily believe that he is the original and

first inventor or discoverer of the art, machine, composition, or improvement, for which he solicits a patent; and that he does not know or believe that the same was ever before known or used; and also of what country he is a citizen; which oath or affirmation may be made before any person authorized by law to administer oaths.

SEC. 7. *And be it further enacted*, That on the filing of any such application, description, and specification, and the payment of the duty hereinafter provided, the Commissioner shall make, or cause to be made, an examination of the alleged new invention or discovery; and if, on any such examination, it shall not appear to the Commissioner that the same had been invented or discovered by any other person in this country, prior to the alleged invention or discovery thereof by the applicant, or that it had been patented or described in any printed publication in this or any foreign country, or had been in public use or on sale, with the applicant's consent or allowance, prior to the application, if the Commissioner shall deem it to be sufficiently useful and important, it shall be his duty to issue a patent therefor. But whenever, on such examination, it shall appear to the Commissioner that the applicant was not the original and first inventor or discoverer thereof, or that any part of that which is claimed as new had before been invented or discovered, or patented or described in any printed publication in this or any foreign country as aforesaid, or that the description is defective and insufficient, he shall notify the applicant thereof, giving him briefly such information and references as may be useful in judging of the propriety of renewing his application, or of altering his specification to embrace only that part of the invention or discovery which is new. In every such case, if the applicant shall elect to withdraw his application, relinquishing his claim to the model, he shall be entitled to receive back twenty dollars, part of the duty required by this act, on filing a notice in writing of such election in the Patent Office; a copy of which, certified by the Commissioner, shall be a sufficient warrant to the treasurer for paying back to the said applicant the said sum of twenty dollars. But if the applicant, in such case, shall persist in his claims for a patent, with or without any alteration of his specification, he shall be required to make oath or affirmation anew, in manner as aforesaid; and if the specification and claim shall not have been so modified as, in the opinion of the Commissioner, shall entitle the applicant to a patent, he may, on appeal, and upon request in writing, have the decision of a board of examiners, to be composed of three disinterested

persons, who shall be appointed for that purpose by the Secretary of State, one of whom, at least, to be selected, if practicable and convenient, for his knowledge and skill in the particular art, manufacture, or branch of science, to which the alleged invention appertains; who shall be under oath or affirmation for the faithful and impartial performance of the duty imposed upon them by said appointment. Said board shall be furnished with a certificate in writing of the opinion and decision of the Commissioner, stating the particular grounds of his objection, and the part or parts of the invention which he considers as not entitled to be patented. And the said board shall give reasonable notice to the applicant, as well as to the Commissioner, of the time and place of their meeting, that they may have an opportunity of furnishing them with such facts and evidence as they may deem necessary to a just decision; and it shall be the duty of the Commissioner to furnish to the board of examiners such information as he may possess relative to the matter under their consideration. And on examination and consideration of the matter by such board, it shall be in their power, or of a majority of them, to reverse the decision of the Commissioner, either in whole or in part; and their opinion being certified to the Commissioner, he shall be governed thereby in the further proceedings to be had on such applications: *Provided, however,* That, before a board shall be instituted in any such case, the applicant shall pay to the credit of the Treasury, as provided in the ninth section of this act, the sum of twenty-five dollars; and each of said persons so appointed shall be entitled to receive, for his services, in each case, a sum not exceeding ten dollars, to be determined and paid by the Commissioner out of any moneys in his hands, which shall be in full compensation to the persons who may be so appointed, for their examination and certificate as aforesaid.

SEC. 8. *And be it further enacted,* That whenever an application shall be made for a patent, which, in the opinion of the Commissioner, would interfere with any other patent for which an application may be pending, or with any unexpired patent which shall have been granted, it shall be the duty of the Commissioner to give notice thereof to such applicants, or patentees, as the case may be; and if either shall be dissatisfied with the decision of the Commissioner on the question of priority of right or invention, on a hearing thereof, he may appeal from such decision, on the like terms and conditions as are provided in the preceding section of this act, and the like proceedings shall be had to determine

which, or whether either, of the applicants is entitled to receive a patent as prayed for. But nothing in this act contained shall be construed to deprive an original and true inventor of the right to a patent for his invention, by reason of his having previously taken out letters-patent therefor in a foreign country, and the same having been published, at any time within six months next preceding the filing of his specification and drawings. And whenever the applicant shall request it, the patent shall take date from the time of filing of the specifications and drawings, not, however, exceeding six months prior to the actual issuing of the patent; and on like request, and the payment of the duty herein required, by any applicant, his specification and drawings shall be filed in the secret archives of the office, until he shall furnish the model, and the patent be issued, not exceeding the term of one year, the applicant being entitled to notice of interfering applications.

SEC. 9. *And be it further enacted*, That before any application for a patent shall be considered by the Commissioner as aforesaid, the applicant shall pay into the Treasury of the United States, or into the Patent Office, or into any of the deposit banks, to the credit of the Treasury, if he be a citizen in the United States, or an alien, and shall have been resident in the United States for one year next preceding, and shall have made oath of his intention to become a citizen thereof, the sum of thirty dollars; if a subject of the King of Great Britain, the sum of five hundred dollars; and all other persons the sum of three hundred dollars; for which payment duplicate receipts shall be taken, one of which to be filed in the office of the treasurer. And the moneys received into the Treasury under this act shall constitute a fund for the payment of the salaries of the officers and clerks herein provided for, and all other expenses of the Patent Office, and to be called the patent fund.

SEC. 10. *And be it further enacted*, That where any person hath made, or shall have made, any new invention, discovery, or improvement, on account of which a patent might by virtue of this act be granted, and such person shall die, before any patent shall be granted therefor, the right of applying for and obtaining such patent shall devolve on the executor or administrator of such person, in trust for the heirs-at-law of the deceased, in case he shall have died intestate; but if otherwise, then in trust for his devisees, in as full and ample manner, and under the same conditions, limitations, and restrictions, as the same was held, or might have been claimed or enjoyed by such person in his or her life-

time : and when application for a patent shall be made by such legal representatives, the oath or affirmation provided in the sixth section of this act shall be so varied as to be applicable to them.

SEC. 11. *And be it further enacted*, That every patent shall be assignable in law, either as to the whole interest, or any undivided part thereof, by any instrument in writing ; which assignment, and also every grant and conveyance of the exclusive right under any patent, to make and use, and to grant to others to make and use, the thing patented within and throughout any specified part or portion of the United States, shall be recorded in the Patent Office within three months from the execution thereof, for which the assignee or grantee shall pay to the Commissioner the sum of three dollars.

SEC. 12. *And be it further enacted*, That any citizen of the United States, or alien, who shall have been a resident of the United States one year next preceding, and shall have made oath of his intention to become a citizen thereof, who shall have invented any new art, machine, or improvement thereof, and shall desire further time to mature the same, may, on paying to the credit of the Treasury, in manner as provided in the ninth section of this act, the sum of twenty dollars, file in the Patent Office a caveat setting forth the design and purpose thereof, and its principal and distinguishing characteristics, and praying protection of his right, till he shall have matured his invention ; which sum of twenty dollars, in case the person filing such caveat shall afterwards take out a patent for the invention therein mentioned, shall be considered a part of the sum herein required for the same. And such caveat shall be filed in the confidential archives of the office, and preserved in secrecy. And if application shall be made by any other person, within one year from the time of filing such caveat, for a patent of any invention with which it may in any respect interfere, it shall be the duty of the Commissioner to deposit the description, specifications, drawings, and model, in the confidential archives of the office, and to give notice (by mail) to the person filing the caveat of such application, who shall, within three months after receiving the notice, if he would avail himself of the benefit of his caveat, file his description, specification, drawings, and model ; and if, in the opinion of the Commissioner, the specifications of claim interfere with each other, like proceedings may be had in all respects as are in this act provided in the case of interfering applications. *Provided, however*, That no opinion or decision of any board of examiners, under



the provisions of this act, shall preclude any person interested in favor of or against the validity of any patent which has been or may hereafter be granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

SEC. 13. *And be it further enacted*, That whenever any patent, which has heretofore been granted, or which shall hereafter be granted, shall be inoperative or invalid, by reason of a defective or insufficient description or specification, or by reason of the patentee claiming, in his specification, as his own invention, more than he had or shall have a right to claim as new, if the error has or shall have arisen by inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, it shall be lawful for the Commissioner, upon the surrender to him of such patent, and the payment of the further duty of fifteen dollars, to cause a new patent to be issued to the said inventor for the same invention, for the residue of the period then unexpired, for which the original patent was granted, in accordance with the patentee's corrected description and specification. And in case of his death, or any assignment by him made of the original patent, a similar right shall vest in his executors, administrators, or assignees. And the patent so reissued, together with the corrected description and specifications, shall have the same effect and operation in law, on the trial of all actions hereafter commenced for causes subsequently accruing, as though the same had been originally filed in such corrected form, before the issuing of the original patent. And whenever the original patentee shall be desirous of adding the description and specification of any new improvement of the original invention or discovery, which shall have been invented or discovered by him subsequent to the date of his patent, he may, like proceedings being had in all respects as in the case of original applications, and on the payment of fifteen dollars, as hereinbefore provided, have the same annexed to the original description and specification; and the Commissioner shall certify, on the margin of such annexed description and specification, the time of its being annexed and recorded; and the same shall thereafter have the same effect in law, to all intents and purposes, as though it had been embraced in the original description and specification.

SEC. 14. *And be it further enacted*, That whenever, in any action for damages [for] making, using, or selling the thing whereof the exclusive right is secured by any patent heretofore granted, or by any patent which may hereafter be

granted, a verdict shall be rendered for the plaintiff in such action, it shall be in the power of the court to render judgment of any sum above the amount found by such verdict as the actual damages sustained by the plaintiff, not exceeding three times the amount thereof, according to the circumstances of the case, with costs; and such damages may be recovered by action on the case, in any court of competent jurisdiction, to be brought in the name or names of the person or persons interested, whether as patentee, assignees, or as grantees of the exclusive right within and throughout a specified part of the United States.

SEC. 15. *And be it further enacted*, That the defendant in any such action shall be permitted to plead the general issue, and to give this act and any special matter in evidence, of which notice in writing may have been given to the plaintiff or his attorney, thirty days before trial, tending to prove that the description and specification filed by the plaintiff does not contain the whole truth relative to his invention or discovery, or that it contains more than is necessary to produce the described effect; which concealment or addition shall fully appear to have been made for the purpose of deceiving the public, or that the patentee was not the original and first inventor or discoverer of the thing patented, or of a substantial and material part thereof, claimed as new, or that it had been described in some public work anterior to the supposed discovery thereof by the patentee, or had been in public use or on sale with the consent and allowance of the patentee before his application for a patent, or that he had surreptitiously or unjustly obtained the patent for that which was in fact invented or discovered by another, who was using reasonable diligence in adapting and perfecting the same; or that the patentee, if an alien at the time the patent was granted, had failed and neglected, for the space of eighteen months from the date of the patent, to put and continue on sale to the public, on reasonable terms, the invention or discovery for which the patent issued; and whenever the defendant relies in his defense on the fact of a previous invention, knowledge, or use of the thing patented, he shall state, in his notice of special matter, the names and places of residence of those whom he intends to prove to have possessed a prior knowledge of the thing and where the same had been used; in either of which cases, judgment shall be rendered for the defendant, with costs; *Provided, however*, That whenever it shall satisfactorily appear that the patentee, at the time of making his application for the patent, believed himself to be the first inventor or discoverer of the

thing patented, the same shall not be void on account of the invention or discovery, or any part thereof, having been known or used in any foreign country ; it not appearing that the same, or any substantial part thereof, had before been patented or described in any printed publication ; *And provided, also,* That whenever the plaintiff shall fail to sustain his action on the ground that in his specification or claim is embraced more than that of which he was the first inventor, if it shall appear that the defendant had used or violated any part of the invention justly and truly specified and claimed as new, it shall be in the power of the court to adjudge and award, as to costs, as may appear to be just and equitable.

SEC. 16. *And be it further enacted,* That whenever there shall be two interfering patents, or whenever a patent or application shall have been refused on an adverse decision of a board of examiners, on the ground that the patent applied for would interfere with an unexpired patent previously granted, any person interested in any such patent either by assignment or otherwise in the one case, and any such applicant in the other case, may have remedy by bill in equity ; and the court having cognizance thereof, on notice to adverse parties, and other due proceedings had, may adjudge and declare either the patents void in the whole or in part, or inoperative and invalid in any particular part or portion of the United States, according to the interest which the parties to such suit may possess in the patent or the inventions patented, and may also adjudge that such applicant is entitled, according to the principles and provisions of this act, to have and receive a patent for his invention, as specified in his claim, or for any part thereof, as the fact of priority of right or invention shall, in any such case, be made to appear. And such adjudication, if it be in favor of the right of such applicant, shall authorize the Commissioner to issue such patent on his filing a copy of the adjudication, and otherwise complying with the requisitions of this act : *Provided, however,* That no such judgment or adjudication shall affect the rights of any person, except the parties to the action, and those deriving title from or under them subsequent to the rendition of such judgment.

SEC. 17. *And be it further enacted,* That all actions, suits, controversies, and cases arising under any law of the United States, granting or confirming to inventors the exclusive right to their inventions or discoveries, shall be originally cognizable, as well in equity as at law, by the circuit courts of the United States, or any district court having the powers and jurisdiction of a circuit court ; which courts shall have

power, upon a bill in equity filed by any party aggrieved in any such case, to grant injunctions, according to the course and principles of courts of equity, to prevent the violation of the rights of any inventor as secured to him by any law of the United States, on such terms and conditions as said courts may deem reasonable: *Provided, however,* That from all judgments and decrees from any such court rendered in the premises, a writ of error or appeal, as the case may require, shall lie to the Supreme Court of the United States, in the same manner, and under the same circumstances, as is now provided by law in other judgments and decrees of circuit courts, and in all other cases in which the court shall deem it reasonable to allow the same.

SEC. 18. *And be it further enacted,* That whenever any patentee of an invention or discovery shall desire an extension of his patent beyond the term of its limitation, he may make application therefor, in writing, to the Commissioner of the Patent Office, setting forth the grounds thereof; and the Commissioner shall, on the applicant's paying the sum of forty dollars to the credit of the Treasury, as in the case of an original application for a patent, cause to be published in one or more of the principal newspapers in the city of Washington, and in such other paper or papers as he may deem proper, published in the section of country most interested adversely to the extension of the patent, a notice of such application, and of the time and place when and where the same will be considered, that any person may appear and show cause why the extension should not be granted. And the Secretary of State, the Commissioner of the Patent Office, and the Solicitor of the Treasury, shall constitute a board to hear and decide upon the evidence produced before them, both for and against the extension, and shall sit for that purpose at the time and place designated in the published notice thereof. The patentee shall furnish to said board a statement, in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures, sufficiently in detail to exhibit a true and faithful account of loss and profit in any manner accruing to him from and by reason of said invention. And if, upon a hearing of the matter, it shall appear to the full and entire satisfaction of said board, having due regard to the public interest therein, that it is just and proper that the term of the patent should be extended, by reason of the patentee, without neglect or fault on his part, having failed to obtain, from the use and sale of his invention, a reasonable remuneration for the time, ingenuity, and expense bestowed upon the same, and the

introduction thereof into use, it shall be the duty of the Commissioner to renew and extend the patent, by making a certificate thereon of such extension, for the term of seven years from and after the expiration of the first term; which certificate, with a certificate of said board of their judgment and opinion as aforesaid, shall be entered on record in the Patent Office; and thereupon the said patent shall have the same effect in law as though it had been originally granted for the term of twenty-one years; and the benefit of such renewal shall extend to assignees and grantees of the right to use the thing patented, to the extent of their respective interests therein; *Provided, however,* That no extension of a patent shall be granted after the expiration of the term for which it was originally issued.

SEC. 19. *And be it further enacted,* That there shall be provided, for the use of said office, a library of scientific works and periodical publications, both foreign and American, calculated to facilitate the discharge of the duties hereby required of the chief officers therein, to be purchased under the direction of the Committee of the Library of Congress. And the sum of fifteen hundred dollars is hereby appropriated for that purpose, to be paid out of the patent fund.

SEC. 20. *And be it further enacted,* That it shall be the duty of the Commissioner to cause to be classified and arranged in such rooms or galleries as may be provided for that purpose, in suitable cases, when necessary for their preservation, and in such manner as shall be conducive to a beneficial and favorable display thereof, the models and specimens of compositions and of fabrics, and other manufactures and works of art, patented or unpatented, which have been, or shall hereafter be, deposited in said office. And said rooms or galleries shall be kept open during suitable hours for public inspection.

SEC. 21. *And be it further enacted,* That all acts and parts of acts heretofore passed on this subject be, and the same are hereby, repealed: *Provided, however,* That all actions and processes in law or equity, sued out prior to the passage of this act, may be prosecuted to final judgment and execution, in the same manner as though this act had not been passed, excepting and saving the application to any such action of the provisions of the fourteenth and fifteenth sections of this act, so far as they may be applicable thereto: *And provided, also,* That all applications for petitions for patents, pending at the time of the passage of this act, in cases where the duty has been paid, shall be proceeded with and acted on in the same manner as though filed after the passage thereof.

AN ACT in addition to the act to promote the progress of Science and Useful Arts.

APPROVED, MARCH 3, 1837.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That any person who may be in possession of, or in any way interested in, any patent for an invention, discovery, or improvement, issued prior to the fifteenth day of December, in the year of our Lord one thousand eight hundred and thirty-six, or in an assignment of any patent, or interest therein, executed and recorded prior to the said fifteenth day of December, may, without charge, on presentation, or transmission thereof, to the Commissioner of Patents, have the same recorded anew in the Patent Office, together with the descriptions, specifications of claim, and drawings annexed or belonging to the same; and it shall be the duty of the Commissioner to cause the same, or any authenticated copy of the original record, specification, or drawing, which he may obtain, to be transcribed and copied into books of record to be kept for that purpose; and whenever a drawing was not originally annexed to the patent and referred to in the specification, any drawing produced as a delineation of the invention, being verified by oath in such manner as the Commissioner shall require, may be transmitted and placed on file, or copied as aforesaid, together with certificate of the oath; or such drawings may be made in the office, under the direction of the Commissioner, in conformity with the specification. And it shall be the duty of the Commissioner to take such measures as may be advised and determined by the board of Commissioners provided for in the fourth section of this act, to obtain the patents, specifications, and copies aforesaid, for the purpose of being so transcribed and recorded. And it shall be the duty of each of the several clerks of the judicial courts of the United States to transmit, as soon as may be, to the Commissioner of the Patent Office, a statement of all the authenticated copies of patents, descriptions, specifications, and drawings of inventions and discoveries, made and executed prior to the aforesaid fifteenth day of December, which may be found on the files of his office; and also to make out and transmit to said Commissioner, for record as aforesaid, a certified copy of every such patent, description, specification, or drawing, which shall be specially required by said Commissioner.

SEC. 2. *And be it further enacted,* That copies of such record and drawings, certified by the Commissioner, or, in his absence, by the chief clerk, shall be *prima facie* evidence of

the particulars of the invention, and of the patent granted therefor in any judicial court of the United States, in all cases where copies of the original record or specification and drawings would be evidence, without proof of the loss of such originals ; and no patent issued prior to the aforesaid fifteenth day of December shall, after the first day of June next, be received in evidence in any of the said courts in behalf of the patentee or other person who shall be in possession of the same, unless it shall have been so recorded anew, and a drawing of the invention, if separate from the patent, verified as aforesaid, deposited in the Patent Office ; nor shall any written assignment of any such patent, executed and recorded prior to the said fifteenth day of December, be received in evidence in any of the said courts in behalf of the assignee or other person in possession thereof, until it shall have been so recorded anew.

SEC. 3. *And be it further enacted*, That, whenever it shall appear to the Commissioner that any patent was destroyed by the burning of the Patent Office building on the aforesaid fifteenth day of December, or was otherwise lost prior thereto, it shall be his duty, on application therefor by the patentee or other person interested therein, to issue a new patent for the same invention or discovery, bearing the date of the original patent, with his certificate thereon, that it was made and issued pursuant to the provisions of the third section of this act, and shall enter the same of record : *Provided, however*, That before such patent shall be issued, the applicant therefor shall deposit in the Patent Office a duplicate, as near as may be, of the original model, drawings, and descriptions, with specifications of the invention or discovery, verified by oath, as shall be required by the Commissioner ; and such patent, and copies of such drawings and descriptions, duly certified, shall be admissible as evidence in any judicial court of the United States, and shall protect the rights of the patentee, his administrators, heirs, and assigns, to the extent only in which they would have been protected by the original patent and specification.

SEC. 4. *And be it further enacted*, That it shall be the duty of the Commissioner to procure a duplicate of such of the models destroyed by fire on the aforesaid fifteenth day of December as were most valuable and interesting, and whose preservation would be important to the public ; and such as would be necessary to facilitate the just discharge of the duties imposed by law on the Commissioner in issuing patents, and to protect the rights of the public and of patentees in patented inventions and improvements : *Provided*, That a

duplicate of such models may be obtained at a reasonable expense: *And provided, also,* That the whole amount of expenditure for this purpose shall not exceed the sum of one hundred thousand dollars. And there shall be a temporary board of Commissioners, to be composed of the Commissioner of the Patent Office and two other persons to be appointed by the President, whose duty it shall be to consider and determine upon the best and most judicious mode of obtaining models of suitable construction; and, also, to consider and determine what models may be procured in pursuance of, and in accordance with, the provisions and limitations in this section contained. And said Commissioners may make and establish all such regulations, terms, and conditions, not inconsistent with law, as in their opinion may be proper and necessary to carry the provisions of this section into effect, according to its true intent.

SEC. 5. *And be it further enacted,* That, whenever a patent shall be returned for correction and reissue, under the thirteenth section of the act to which this is additional, and the patentee shall desire several patents to be issued for distinct and separate parts of the thing patented, he shall first pay, in manner and in addition to the sum provided by that act, the sum of thirty dollars for each additional patent so to be issued: *Provided, however,* That no patent made prior to the aforesaid fifteenth day of December shall be corrected and reissued until a duplicate of the model and drawing of the thing, as originally invented, verified by oath as shall be required by the Commissioner, shall be deposited in the Patent Office. Nor shall any addition of an improvement be made to any patent heretofore granted, nor any new patent be issued for an improvement made in any machine, manufacture, or process, to the original inventor, assignee, or possessor, of a patent therefor, nor any disclaimer be admitted to record, until a duplicate model and drawing of the thing originally invented, verified as aforesaid, shall have been deposited in the Patent Office, if the Commissioner shall require the same; nor shall any patent be granted for an invention, improvement, or discovery, the model or drawing of which shall have been lost, until another model and drawing, if required by the Commissioner, shall, in like manner, be deposited in the Patent Office. And in all such cases, as well as in those which may arise under the third section of this act, the question of compensation for such models and drawing shall be subject to the judgment and decision of the Commissioners provided for in the fourth section, under the same limitations and restrictions as are therein prescribed.



SEC. 6. *And be it further enacted*, That any patent hereafter to be issued may be made and issued to the assignee or assignees of the inventor or discoverer, the assignment thereof being first entered of record, and the application therefor being duly made, and the specification duly sworn to by the inventor. And in all cases hereafter, the applicant for a patent shall be held to furnish duplicate drawings, whenever the case admits of drawings, one of which to be deposited in the office, and the other to be annexed to the patent, and considered a part of the specification.

SEC. 7. *And be it further enacted*, That whenever any patentee shall have, through inadvertence, accident, or mistake, made his specification of claim too broad, claiming more than that of which he was the original or first inventor, some material and substantial part of the thing patented being truly and justly his own, any such patentee, his administrators, executors, and assigns, whether of the whole or of a sectional interest therein, may make disclaimer of such parts of the thing patented as the disclaimant shall not claim to hold by virtue of the patent or assignment, stating therein the extent of his interest in such patent; which disclaimer shall be in writing, attested by one or more witnesses, and recorded in the Patent Office, on payment by the person disclaiming, in manner as other patent duties are required by law to be paid, of the sum of ten dollars. And such disclaimer shall thereafter be taken and considered as part of the original specification, to the extent of the interest which shall be possessed in the patent or right secured thereby, by the disclaimant, and by those claiming by or under him, subsequent to the record thereof. But no such disclaimer shall affect any action pending at the time of its being filed, except so far as may relate to the question of unreasonable neglect or delay in filing the same.

SEC. 8. *And be it further enacted*, That whenever application shall be made to the Commissioner for any addition of a newly discovered improvement to be made to any existing patent, or whenever a patent shall be returned for correction and reissue, the specification of claim annexed to every such patent shall be subject to revision and restriction, in the same manner as are original applications for patents; the Commissioner shall not add any such improvement to the patent in the one case, nor grant the reissue in the other case, until the applicant shall have entered a disclaimer, or altered his specification of claim in accordance with the decision of the Commissioner; and in all such cases, the applicant, if dissatisfied with such decision, shall have the

same remedy, and be entitled to the benefit of the same privileges and proceedings, as are provided by law in the case of original applications for patents.

SEC. 9. *And be it further enacted*, (anything in the fifteenth section of the act, to which this is additional, to the contrary notwithstanding,) That whenever, by mistake, accident or inadvertence, and without any willful default, or intent to defraud or mislead the public, any patentee shall have in his specification claimed to be the original and first inventor or discoverer of any material or substantial part of the thing patented, of which he was not the first and original inventor, and shall have no legal or just right to claim the same, in every such case the patent shall be deemed good and valid for so much of the invention or discovery as shall be truly and bonâ fide his own : *Provided*, It shall be a material and substantial part of the thing patented, and be definitely distinguishable from the other parts so claimed without right as aforesaid. And every such patentee, his executors, administrators, and assigns, whether of a whole or of a sectional interest therein, shall be entitled to maintain a suit at law or in equity on such patent for any infringement of such part of the invention or discovery as shall be bonâ fide his own as aforesaid, notwithstanding the specification may embrace more than he shall have any legal right to claim. But in every such case in which a judgment or verdict shall be rendered for the plaintiff, he shall not be entitled to recover costs against the defendant, unless he shall have entered at the Patent Office, prior to the commencement of the suit, a disclaimer to all that part of the thing patented which was so claimed without right : *Provided, however*, That no person bringing any such suit shall be entitled to the benefits of the provisions contained in this section, who shall have unreasonably neglected or delayed to enter at the Patent Office a disclaimer as aforesaid.

SEC. 10. *And be it further enacted*, That the Commissioner is hereby authorized and empowered to appoint agents in not exceeding twenty of the principal cities or towns in the United States, as may best accommodate the different sections of the country, for the purpose of receiving and forwarding to the Patent Office all such models, specimens of ingredients, and manufactures, as shall be intended to be patented or deposited therein, the transportation of the same to be chargeable to the patent fund.

SEC. 11. *And be it further enacted*, That instead of one examining clerk, as provided by the second section of the act to which this is additional, there shall be appointed, in

manner therein provided, two examining clerks, each to receive an annual salary of fifteen hundred dollars; and, also, an additional copying clerk, at an annual salary of eight hundred dollars. And the Commissioner is also authorized to employ, from time to time, as many temporary clerks as may be necessary to execute the copying and draughting required by the first section of this act, and to examine and compare the records with the originals, who shall receive not exceeding seven cents for every page of one hundred words, and for drawings and comparison of records with originals, such reasonable compensation as shall be agreed upon or prescribed by the Commissioner.

SEC. 12. *And be it further enacted*, That whenever the application of any foreigner for a patent shall be rejected and withdrawn for want of novelty in the invention, pursuant to the seventh section of the act to which this is additional, the certificate thereof of the Commissioner shall be a sufficient warrant to the Treasurer to pay back to such applicant two thirds of the duty he shall have paid into the Treasury on account of such application.

SEC. 13. *And be it further enacted*, That in all cases in which an oath is required by this act, or by the act to which this is additional, if the person of whom it is required shall be conscientiously scrupulous of taking an oath, affirmation may be substituted therefor.

SEC. 14. *And be it further enacted*, That all moneys paid into the Treasury of the United States for patents and for fees for copies furnished by the Superintendent of the Patent Office prior to the passage of the act of which this is additional, shall be carried to the credit of the patent fund created by said act; and the moneys constituting said fund shall be, and the same are hereby, appropriated for the payment of the salaries of the officers and clerks provided by said act, and all other expenses of the Patent Office, including all the expenditures provided for by this act; and, also, for such other purposes as are, or may be hereafter, specially provided for by law. And the Commissioner is hereby authorized to draw upon said fund, from time to time, for such sums as shall be necessary to carry into effect the provisions of this act, governed, however, by the several limitations herein contained. And it shall be his duty to lay before Congress, in the month of January, annually, a detailed statement of the expenditures and payments by him made from said fund. And it shall also be his duty to lay before Congress, in the month of January, annually, a list of all patents which shall have been granted during the preceding year,

designating, under proper heads, the subjects of such patents, and furnishing an alphabetical list of the patentees, with their places of residence; and he shall also furnish a list of all patents which shall have become public property during the same period; together with such other information of the state and condition of the Patent Office as may be useful to Congress or the public.

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AN ACT in addition to an "Act to promote the progress of the Useful Arts."

APPROVED, MARCH 3, 1839.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be appointed, in manner provided in the second section of the act to which this is additional, two assistant examiners, each to receive an annual salary of twelve hundred and fifty dollars.

SEC. 2. *And be it further enacted,* That the Commissioner be authorized to employ temporary clerks to do any necessary transcribing, whenever the current business of the office requires it: *Provided, however,* That instead of salary a compensation shall be allowed, at a rate not greater than is charged for copies now furnished by the office.

SEC. 3. *And be it further enacted,* That the Commissioner is hereby authorized to publish a classified and alphabetical list of all patents granted by the Patent Office previous to said publication, and retain one hundred copies for the Patent Office, and nine hundred copies to be deposited in the library of Congress, for such distribution as may be hereafter directed; and that one thousand dollars, if necessary, be appropriated, out of the patent fund, to defray the expense of the same.

SEC. 4. *And be it further enacted,* That the sum of three thousand six hundred and fifty-nine dollars and twenty-two cents be, and is hereby, appropriated from the patent fund, to pay for the use and occupation of rooms in the City Hall by the Patent Office.

SEC. 5. *And be it further enacted,* That the sum of one thousand dollars be appropriated from the patent fund, to be expended under the direction of the Commissioner, for the purchase of necessary books for the library of the Patent Office.

SEC. 6. *And be it further enacted,* That no person shall be debarred from receiving a patent for any invention or discovery, as provided in the act approved on the fourth day of July, one thousand eight hundred and thirty-six, to which

this is additional, by reason of the same having been patented in a foreign country more than six months prior to his application: *Provided*, That the same shall not have been introduced into public and common use in the United States prior to the application for such patent: *And provided, also*, That in all cases every such patent shall be limited to the term of fourteen years, from the date or publication of such foreign letters-patent.

SEC. 7. *And be it further enacted*, That every person or corporation who has, or shall have, purchased or constructed any newly invented machine, manufacture, or composition of matter, prior to the application by the inventor or discoverer for a patent, shall be held to possess the right to use, and vend to others to be used, the specific machine, manufacture, or composition of matter, so made or purchased, without liability therefor to the inventor, or any other person interested in such invention; and no patent shall be held to be invalid by reason of such purchase, sale, or use, prior to the application for a patent as aforesaid, except on proof of abandonment of such invention to the public, or that such purchase, sale, or prior use, has been for more than two years prior to such application for a patent.

SEC. 8. *And be it further enacted*, That so much of the eleventh section of the above recited act as requires the payment of three dollars to the Commissioner of Patents for recording any assignment, grant, or conveyances of the whole or any part of the interest or right under any patent, be, and the same is hereby, repealed; and all such assignments, grants, and conveyance, shall in future be recorded without any charge whatever.

SEC. 9. *And be it further enacted*, That a sum of money, not exceeding one thousand dollars, be, and the same is hereby, appropriated out of the patent fund, to be expended by the Commissioner of Patents in the collection of agricultural statistics, and for other agricultural purposes; for which the said Commissioner shall account in his next annual report.

SEC. 10. *And be it further enacted*, That the provisions of the sixteenth section of the before recited act shall extend to all cases where patents are refused for any reason whatever, either by the Commissioner of Patents or by the Chief Justice of the District of Columbia, upon appeals from the decision of said Commissioner, as well as where the same shall have been refused on account of or by reason of interference with a previously existing patent; and in all cases where there is no opposing party, a copy of the bill shall be served upon the Commissioner of Patents, when the whole of

the expenses of the proceedings shall be paid by the applicant, whether the final decision shall be in his favor or otherwise.

SEC. 11. *And be it further enacted*, That in cases where an appeal is now allowed by law from the decision of the Commissioner of Patents to a Board of Examiners provided for in the seventh section of the act to which this is additional, the party, instead thereof, shall have a right to appeal to the Chief Justice of the District Court of the United States for the District of Columbia, by giving notice thereof to the Commissioner, and filing in the Patent Office, within such time as the Commissioner shall appoint, his reasons of appeal, specifically set forth in writing, and also paying into the Patent Office, to the credit of the patent fund, the sum of twenty-five dollars. And it shall be the duty of said Chief Justice, on petition, to hear and determine all such appeals, and to revise such decisions in a summary way, on the evidence produced before the Commissioner, at such early and convenient time as he may appoint, first notifying the Commissioner of the time and place of hearing, whose duty it shall be to give notice thereof to all parties who appear to be interested therein, in such manner as said judge shall prescribe. The Commissioner shall also lay before the said judge all the original papers and evidence in the case, together with the grounds of his decision, fully set forth in writing, touching all the points involved by the reasons of appeal, to which the revision shall be confined. And at the request of any party interested, or at the desire of the judge, the Commissioner and the examiners in the Patent Office may be examined under oath, in explanation of the principles of the machine, or other thing for which a patent, in such case, is prayed for. And it shall be the duty of the said judge, after hearing of any such case, to return all papers to the Commissioner, with a certificate of his proceedings and decision, which shall be entered of record in the Patent Office; and such decision, so certified, shall govern the further proceedings of the Commissioner in such case: *Provided, however*, That no opinion or decision of the judge in any such case shall preclude any person, interested in favor or against the validity of any patent which has been, or may hereafter be, granted, from the right to contest the same in any judicial court, in any action in which its validity may come in question.

SEC. 12. *And be it further enacted*, That the Commissioner of Patents shall have power to make all such regulations, in respect to the taking of evidence to be used in contested cases before him, as may be just and reasonable. And so

much of the act to which this is additional as provides for a Board of Examiners is hereby repealed.

SEC. 13. *And be it further enacted*, That there be paid annually, out of the patent fund, to the said Chief Justice, in consideration of the duties herein imposed, the sum of one hundred dollars.

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AN ACT in addition to an act to promote the progress of the Useful Arts, and to repeal all acts and parts of acts heretofore made for that purpose.

APPROVED, AUGUST 29, 1842.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the Treasurer of the United States be and he is hereby authorized to pay back, out of the patent fund, any sum or sums of money, to any person who shall have paid the same into the Treasury or to any receiver or depository, to the credit of the Treasurer, as for fees accruing at the Patent Office through mistake, and which are not provided to be paid by existing laws, certificate thereof being made to said Treasurer by the Commissioner of Patents.

SEC. 2. *And be it further enacted*, That the third section of the act of March, eighteen hundred and thirty-seven, which authorizes the renewing of patents lost prior to the fifteenth of December, eighteen hundred and thirty-six, is extended to patents granted prior to said fifteenth day of December, though they may have been lost subsequently: *Provided, however*, The same shall not have been recorded anew under the provisions of said act.

SEC. 3. *And be it further enacted*, That any citizen or citizens, or alien or aliens, having resided one year in the United States, and taken the oath of his or their intention to become a citizen or citizens, who by his, her, or their own industry, genius, efforts, and expense, may have invented or produced any new and original design for a manufacture, whether of metal or other material or materials, or any new and original design for the printing of woolen, silk, cotton, or other fabrics, or any new and original design for a bust, statue, or bas relief, or composition in alto or basso relievo, or any new and original impression or ornament, or to be placed on any article of manufacture, the same being formed in marble or other material, or any new and useful pattern, or print, or picture, to be either worked into or worked on, or printed, or painted, or cast, or otherwise fixed on, any article of manufacture, or any new and original shape or configuration of any article of manufacture not known or

used by others before his, her, or their invention or production thereof, and prior to the time of his, her, or their application for a patent therefor, and who shall desire to obtain an exclusive property or right therein to make, use, and sell and vend the same, or copies of the same, to others, by them to be made, used, and sold, may make application, in writing, to the Commissioner of Patents, expressing such desire, and the Commissioner, on due proceeding had, may grant a patent therefor, as in the case now of application for a patent: *Provided*, That the fee, in such cases, which by the now existing laws would be required of the particular applicant, shall be one half the sum, and that the duration of said patent shall be seven years, and that all the regulations and provisions which now apply to the obtaining or protection of patents, not inconsistent with the provisions of this act, shall apply to applications under this section.

SEC. 4. *And be it further enacted*, That the oath required for applicants for patents may be taken, when the applicant is not, for the time being, residing in the United States, before any minister plenipotentiary, charge d'affaires, consul, or commercial agent holding commission under the government of the United States, or before any notary public of the foreign country in which such applicant may be.

SEC. 5. *And be it further enacted*, That if any person or persons shall paint, or print, or mould, cast, carve, or engrave, or stamp, upon any thing made, used or sold by him, for the sole making or selling which he hath not, or shall not have, obtained letters-patent, the name, or any imitation of the name, of any other person who hath or shall have obtained letters-patent for the sole making and vending of such thing, without consent of such patentee, or his assigns or legal representatives; or if any person, upon any such thing not having been purchased from the patentee, or some person who purchased it from or under such patentee, or not having the license or consent of such patentee, or his assigns or legal representatives, shall write, paint, print, mould, cast, carve, engrave, stamp, or otherwise make or affix the word "patent," or the words "letters-patent," or the word "patentee," or any word or words of like kind, meaning, or import, with the view or intent of imitating or counterfeiting the stamp, mark, or other device, of the patentee, or shall affix the same, or any word, stamp, or device of like import, on any unpatented article, for the purpose of deceiving the public, he, she, or they, so offending, shall be liable for such offense to a penalty of not less than one hundred dollars, with costs, to be recovered, by action in any of the circuit



courts of the United States, or in any of the district courts of the United States, having the powers and jurisdiction of a circuit court; one half of which penalty, as recovered, shall be paid to the patent fund, and the other half to any person or persons who shall sue for the same.

SEC. 6. *And be it further enacted*, That all patentees and assignees of patents hereafter granted are hereby required to stamp, engrave, or cause to be stamped or engraved, on each article vended or offered for sale, the date of the patent; and if any person or persons, patentees or assignees, shall neglect to do so, he, she, or they, shall be liable to the same penalty, to be recovered and disposed of in the manner specified in the foregoing fifth section of this act.

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AN ACT to provide additional examiners in the Patent Office, and for other purposes.

APPROVED, MAY 27, 1848.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That there shall be appointed, in the manner provided in the second section of the act entitled "An Act to promote the progress of useful arts, and to repeal all acts and parts of acts heretofore made for that purpose," approved July fourth, eighteen hundred and thirty-six, two principal examiners, and two assistant examiners, in addition to the number of examiners now employed in the Patent Office; and that hereafter each of the principal examiners employed in the Patent Office shall receive an annual salary of twenty-five hundred dollars, and each of the assistant examiners an annual salary of fifteen hundred dollars: *Provided*, That the power to extend patents, now vested in the board composed of the Secretary of State, Commissioner of Patents, and Solicitor of the Treasury, by the eighteenth section of the act approved July fourth, eighteen hundred and thirty-six, respecting the Patent Office, shall hereafter be vested solely in the Commissioner of Patents; and when an application is made to him for the extension of a patent according to said eighteenth section, and sixty days' notice given thereof, he shall refer the case to the principal examiner having charge of the class of inventions to which said case belongs, who shall make a full report to said Commissioner of the said case, and particularly whether the invention or improvement secured in the patent was new and patentable when patented; and thereupon the said Commissioner shall grant or refuse the extension of said patent, upon the same principles and rules

that have governed said board; but no patent shall be extended for a longer term than seven years.

SEC. 2. *And be it further enacted*, That hereafter the Commissioner of Patents shall require a fee of one dollar for recording any assignment, grant, or conveyance of the whole or any part of the interest in letters-patent, or power of attorney, or license to make or use the things patented, when such instrument shall not exceed three hundred words; and the sum of two dollars when it shall exceed three hundred and shall not exceed one thousand words; and the sum of three dollars when it shall exceed one thousand words; which fees shall in all cases be paid in advance.

SEC. 3. *And be it further enacted*, That there shall be appointed in manner aforesaid two clerks, to be employed in copying and recording, and in other services in the Patent Office, who shall be paid a salary of one thousand two hundred dollars per annum.

SEC. 4. *And be it further enacted*, That the Commissioner of Patents is hereby authorized to send by mail, free of postage, the annual reports of the Patent Office, in the same manner in which he is empowered to send letters and packages relating to the business of the Patent Office.

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SECTION 15 of the act entitled "An act to provide for the better organization of the Treasury, and for the collection, safe-keeping, transfer, and disbursement of the public revenue."

APPROVED, AUGUST 6, 1846.

*And be it further enacted*, That all marshals, district attorneys, and others having public money to pay to the United States, and all patentees wishing to make payment for patents to be issued, may pay all such moneys to the Treasurer of the United States, or to the treasurer of either of the Mints in Philadelphia or New Orleans, to either of the other assistant treasurers, or to such other depository constituted by this act as shall be designated by the Secretary of the Treasury, in other parts of the United States, to receive such payments and give receipts or certificates of deposit therefor.

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AN ACT in addition to an act to promote the progress of the Useful Arts.

APPROVED, AUGUST 30, 1852.

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That appeals provided for in the eleventh section of the act entitled "An act in addition to an act to promote the progress of the Useful Arts," approved March the third, eighteen hundred and thirty-nine, may also be made to either of the

assistant judges of the circuit court of the District of Columbia; and all the powers, duties, and responsibilities imposed by the aforesaid act, and conferred upon the chief judge, are hereby imposed and conferred upon each of the said assistant judges.

SEC. 2. *And be it further enacted*, That in case appeal shall be made to the said chief judge, or to either of the said assistant judges, the Commissioner of Patents shall pay to such chief judge, or assistant judge, the sum of twenty-five dollars, required to be paid by the appellant into the Patent Office by the eleventh section of said act, on said appeal.

SEC. 3. *And be it further enacted*, That section thirteen of the aforesaid act, approved March the third, eighteen hundred and thirty-nine, is hereby repealed.

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UNITED STATES PATENT OFFICE,

*August 12, 1854.*

Previous to the second examination of any case which has been once rejected, the seventh section of the act of 1836 requires the applicant to renew, in substance, the oath originally filed with his specification. After thus applying for a second examination, no withdrawal of any part of the fee paid is authorized.

The previous practice of the Office having on a recent occasion been seriously questioned, the law has been carefully considered, and there being no reasonable doubt of its having been heretofore departed from in this respect, the change above intimated seems unavoidable.

But the applicant, without renewing his oath, or forfeiting his right to withdrawal, may point out any mistake or oversight on the part of the Office, which will be cheerfully corrected.

To render this change as gradual and as little inconvenient as possible, this rule will not be held applicable to cases wherein the first rejection has already been made, provided any subsequent steps have been taken by the applicant preparatory to an application for a second examination.

CHARLES MASON,

*Commissioner of Patents.*

# **RULES AND DIRECTIONS**

**FOR**

**PROCEEDINGS IN THE PATENT OFFICE.**



## RULES AND DIRECTIONS FOR PROCEEDINGS IN THE PATENT OFFICE.

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The following information and regulations are mainly intended for the benefit of persons having business with the Patent Office. They are designed to be in strict accordance with the foregoing acts of Congress applicable to the subject; which acts are printed in pamphlet form, and will be forwarded by the office to any one who may desire them.

### WHO ENTITLED TO A PATENT.

1. Any person, whether citizen or alien, may obtain a patent for any invention or improvement made by him, and not before known. For greater particularity, see act of 1836, sections 6 and 7; act of 1842, section 3.

2. The assignee of any invention may have the patent issue to him directly, (act of 1837, section 6;) but this is held to apply only to assignees of entire interests: so that although, when the inventor assigns his *entire* interest to two or more, a patent will issue to them jointly, still if he yet retains a portion in himself, a joint patent will not be issued to him and them. The reason of this is not very evident, but the Attorney General has so decided.

3. In case of the death of the inventor, the patent will issue to his legal representatives. (Act of 1836, section 10.)

4. Joint inventors are entitled to a joint patent; but neither can claim one separately.

### WHAT WILL PREVENT THE GRANTING OF A PATENT.

5. Even although the applicant has in good faith actually made an invention, a patent therefor will not be granted him if the whole or any part of what he claims as new had before been patented or described in any printed publication in this or any foreign country, or even if it had before been invented or discovered *in this country*, (act of 1836, section 7;) or if he has once abandoned his invention to the public; or if, with his consent and allowance, it has been for more than two years in public use or on sale. (Act of 1836, section 6; act of 1839, section 7.)

6. The mere fact of prior invention or discovery abroad will not prevent the issue of the patent, unless the invention had been there patented or described in some printed publication. (Act of 1836, section 7; also act of 1836, section 15.)

7. Merely conceiving the idea of an improvement or machine in this country, is not such an "invention" or "discovery" as is above contemplated. The invention must have been reduced to a practical form, either by the construction of the machine itself, or of a model thereof, or at least by making a full drawing of it, before it will prevent a subsequent inventor from obtaining a patent.—(See *Hildreth vs. Heath*, and *Perry vs. Cornell*, decided by Judge Cranch on an appeal from the Commissioner.)

#### MODE OF PROCEEDING TO OBTAIN A PATENT.

8. The application must be made by the actual inventor, if alive, (act of 1836, section 6,) even although the patent is to issue to the assignee, (act of 1837, section 6;) but where the inventor is dead, the application and oath may be made by the executor or administrator. (Act of 1836, section 10.)

9. The application must be in writing, signed by the applicant, and addressed to the Commissioner of Patents.

The following is the usual form, to be varied according to circumstances :

#### PETITION.

TO THE COMMISSIONER OF PATENTS :

The petition of John Fitch, of Philadelphia, in the county of Philadelphia, and State of Pennsylvania,

RESPECTFULLY REPRESENTS :

That your petitioner has invented a new and improved mode of preventing steam-boilers from bursting, which he verily believes has not been known or used prior to the invention thereof by your petitioner. He therefore prays that letters patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and condition expressed in the act of Congress in that case made and provided; he having paid thirty dollars into the Treasury, and complied with the other provisions of the said act.

JOHN FITCH.

10. The applicant must set forth in his specification the precise invention for which he claims a patent.

If claimed as a mere improvement on another invention, that fact should be clearly stated; and if claimed as substantially differing from another invention with which it appears to be coincident, the difference must be clearly pointed out.

11. Two or more separate machines will not be allowed to be the subject of one patent, whatever be the purpose for which they are used. This is intended to change the prac-

tice of the office in those respects, wherein in certain cases all the machines used in the manufacture of one article are allowed to be claimed in one application.

12. The specification must be signed by the inventor, (or by his executor or administrator if the inventor be dead). It should describe the sections of the drawings (where there are drawings) and refer by letters and figures to the different parts. The substantial requisites of the specification are set forth in the act of Congress of 1836, section 6. The following may be taken as a specimen of the proper form :

### SPECIFICATION.

TO ALL WHOM IT MAY CONCERN :

Be it known that I, John Fitch, of Philadelphia, in the county of Philadelphia, in the State of Pennsylvania, have invented a new and improved mode of preventing steam-boilers from bursting ; and I do hereby declare that the following is a full and exact description thereof, reference being had to the accompanying drawings, and to the letters of reference marked thereon.

The nature of my invention consists in providing the upper part of a steam-boiler with an aperture in addition to that for the safety-valve ; which aperture, is to be closed by a plug or disk of alloy, which will fuse at any given degree of heat, and permit the steam to escape, should the safety-valve fail to perform its functions.

To enable others skilled in the art to make and use my invention, I will proceed to describe its construction and operation. I construct my steam-boiler in any of the known forms, and apply thereto gauge-cocks, a safety-valve, and the other appendages of such boilers ; but, in order to obviate the danger arising from the adhesion of the safety-valve, and from other causes, I make a second opening in the top of the boiler, similar to that made for the safety-valve, as shown at A, in the accompanying drawing ; and in this opening I insert a plug or disk of fusible alloy, securing it in its place by a metal ring and screws, or otherwise. This fusible metal I, in general, compose of a mixture of lead, tin, and bismuth, in such proportions as will insure its melting at a given temperature, which must be that to which it is intended to limit the steam ; and will, of course, vary with the pressure the boiler is intended to sustain.

I surround the opening containing the fusible alloy by a tube, B, intended to conduct off any steam which may be discharged therefrom. When the temperature of the steam in such a boiler rises to its assigned limit, the fusible alloy will melt, and allow the steam to escape freely, thereby securing it from all danger of explosion.

What I claim as my invention, and desire to secure by letters patent, is the application to steam-boilers of a fusible alloy, which will melt at a given temperature, and allow the steam to escape, as herein described, using for that purpose the aforesaid metallic compound, or any other substantially the same, and which will produce the intended effect.

JOHN FITCH.

WITNESSES—

ROBERT FULTON,  
OLIVER EVANS.

When the application is for a machine, the specification should commence thus :

Be it known that I, ....., of ....., in the county of ....., and State of ....., have invented a new and useful machine for *(stating the use and title of the machine ; and if the application is for an improvement, it should read thus : a new and useful improvement on a, or on the machine, etc ,)* and I do hereby declare that the following is a full, clear, and



exact description of the construction and operation of the same ; reference being had to the annexed drawings, making a part of this specification, in which figure 1 is a perspective view ; figure 2 a longitudinal elevation ; figure 3 a transverse section, etc. ; (thus describing all the sections of the drawings and then referring to the parts by letters. Then follows the description of the construction and operation of the machine ; and lastly the claim, which should express the nature and character of the invention, and identify the parts claimed separately or in combination. If the specification is for an improvement, the original invention should be disclaimed, and the claim confined to the improvement.)

13. The specification must be signed by the inventor and attested by two witnesses. (Act of 1836, section 6.)

14. The applicant must then make oath or affirmation as required by the act of 1836, section 6, which must be substantially as follows :

#### OATH.

CITY AND COUNTY OF PHILADELPHIA, } ss.  
State of Pennsylvania.

On this ..... day of ....., 185..., before me, the subscriber, a ..... personally appeared the within named John Fitch, and made solemn oath (or affirmation) that he verily believes himself to be the original and first inventor of the mode herein described for preventing steam-boilers from bursting ; and that he does not know or believe the same was ever before known or used ; and that he is a citizen of the United States.

(Signed,)

..... J. P.

In the case of an alien, who has taken the requisite steps to become naturalized, the following form should be adopted :

CITY AND COUNTY OF PHILADELPHIA, } ss.  
State of Pennsylvania.

On this ..... day of ....., 185..., before me, the subscriber, a ..... personally appeared the within named John Fitch, and made solemn oath (or affirmation) that he verily believes himself to be the original and first inventor of the mode herein described for preventing steam-boilers from bursting, and that he does not know or believe the same was ever before known or used ; and that he is a native of the Kingdom of Great Britain : that he has resided within the United States for the whole of the past year, and has taken the oath prescribed by law for becoming naturalized in this country.

(Signed,)

..... J. P.

15. If the applicant is an alien not residing in the United States, or if he has not taken the requisite steps to become naturalized, the oath must be modified accordingly. (See act of 1836, section 9.)

16. The oath may be taken before any person authorized by law to administer oaths. When taken before a justice of the peace not having a seal of office, the fact of his being an acting justice of the peace should be certified to by the clerk of the proper court, attested by his seal of office.

17. When the oath is taken in a foreign country, the oath may be taken before any minister plenipotentiary, chargé d'affaires, consul or commercial agent, holding commission under the government of the United States, or before any

notary public of the country in which the oath is taken, being attested in all cases by the proper official seal.

18. The drawings required by law (see act of 1836, section 6) should generally be in perspective. Such parts as cannot be shown in perspective must, if described, be represented in plans, sections, or details.

19. Duplicate drawings should be sent to the office in the first instance. They should be neatly executed on sheets separate from the other papers—from eighteen to nineteen inches from top to bottom, and not less than thirteen across, nor more than twenty-five, unless more space is necessary to exhibit the device or machine with clearness. One of these drawings, which is to be kept in the office for reference, should be on stiff drawing-paper. The other, which is to be attached to the patent, should have a margin of one inch at least for that purpose on the right-hand side, and should be on some material that will bear folding and transportation. Each part should be distinguished by the same number or letter, wherever that part is delineated in the drawings, and should be referred to in the specification by such letter or number. These drawings should be signed by the applicant and attested by two witnesses.

20. The model must be neatly and substantially made of durable material, and not more than one foot in length or height, except when a larger model is permitted by the office for special reasons to be shown by the applicant. If made of pine or other soft wood, it should be painted, stained, or varnished.

A working model is always desirable, in order to enable the office fully and readily to understand the precise operation of the machine. The name of the inventor, and also of the assignee (if assigned,) must be fixed upon it in a permanent manner.

21. When the invention is of a composition of matter, a specimen of the ingredients and of the composition, which the law requires, must accompany the application (see act of 1836, section 6,) and the name of the inventor and assignee (if there be one) must be permanently affixed thereto.

22. Models or specimens forwarded without a name are liable to be lost or mislaid, as they cannot be entered upon the record.

23. No application can be examined, nor can the case be placed upon the files for examination, until the fee is paid and the model or specimen deposited, and a specification, together with a petition, oath, and drawings (when required,) are filed.

24. The following persons are appointed agents to receive and forward to this office, models, specimens, and manufactures, in accordance with the tenth section of the act of 1837 :

The collector of the port of Portsmouth, New Hampshire.

The collector of the port of Portland, Maine.

The collector of the port of Burlington, Vermont.

The collector of the port of Providence, Rhode Island.

The collector of the port of Boston, Massachusetts.

The collector of the port of Hartford, Connecticut.

The collector of the port of New York.

The collector of the port of Philadelphia, Pennsylvania.

The collector of the port of Baltimore, Maryland.

The collector of the port of Richmond, Virginia.

The collector of the port of Charleston, South Carolina.

The collector of the port of Savannah, Georgia.

The collector of the port of New Orleans, Louisiana.

The collector of the port of Detroit, Michigan.

The collector of the port of Buffalo, New York.

The surveyor at St. Louis, Missouri.

The collector of the port of Cleveland, Ohio.

The surveyor at Chicago, Illinois.

The surveyor at Cincinnati, Ohio.

The surveyor at Louisville, Kentucky.

#### OF THE EXAMINATION.

25. All cases in the Patent Office are arranged in classes, which are taken up for examination in regular rotation.

Those in the same class are examined and disposed of, as far as practicable, in the order in which the respective applications are completed. When, however, the applicant has a foreign patent for his invention, or when such invention is deemed of peculiar importance to some branch of the public service, and when, for that reason, the head of some department of the government specially requests immediate action, the case will be taken up out of its order. These, with applications for additional improvements and reissues, are the only exceptions to the rule above stated in relation to the order of examination.

26. A defective specification or drawing is amenable at any time before the patent issues. But where any substantial change is made by describing or representing a new invention—not included as a part of the invention originally described—a second affidavit must be made to the specification as amended, and the signature of witnesses will also be required anew.

27. When the change thus made is very considerable, the case may be placed at the foot of the list, to await its turn anew in the order of examination.

28. After a case has been examined and the claim allowed, no alteration will be permitted in the character of the invention without a withdrawal of the case and the filing of a new application, or (if the patent be granted) an application for a reissue, or for an additional improvement, as the case may require.

29. The personal attendance of the applicant at the Patent Office is unnecessary. The business can be done by correspondence or by attorney. All correspondence must be addressed to the Commissioner.

30. When an application has been finally decided, the office will retain the original papers, furnishing the applicant copies—if he desires them—at the usual expense.

31. If the patent is granted, it will be transmitted to the inventor, or to his agent, in case he has a full power of attorney authorizing him to receive it. If an assignment be made of the entire patent right, the patent will be sent to the assignee or to his attorney.

#### OF WITHDRAWALS.

32. If, when an application is rejected, the applicant relinquishes his claim, in pursuance of the 7th section of the act of 1836, and the 12th section of the act of 1837, he must notify the Commissioner of the fact of such withdrawal, sending at the same time his receipt for two-thirds of the fee paid by him, which will be thereupon returned. The model and papers will be retained by the office. The applicant may, however, have the duplicate drawing if he desires it.

33. No money will be refunded when the withdrawal is made after an appeal has been taken to either of the judges of the circuit court of the District of Columbia.

34. In withdrawing an application, the following forms may be followed:

#### TO THE COMMISSIONER OF PATENTS:

SIR: I hereby withdraw my application for a patent for improvements in the cotton-gin, now in your office, and request that twenty dollars may be returned to me, agreeably to the provision of the act of Congress authorizing such withdrawal.

ELI WHITNEY.

CABOTSVILLE, MASS., *February 16, 1853.*

Received of the Treasurer of the United States, per Charles Mason, Commissioner of Patents, twenty dollars, being the amount refunded on withdrawing my application for a patent for improvements in the cotton-gin.

ELI WHITNEY.

CABOTSVILLE, MASS., *February 15, 1853.*

35. Particular instructions should be given by the persons withdrawing money from the office as to the manner in which the money shall be paid—whether to his order at this office, or remitted by mail.

36. When caveats have been filed, withdrawals can be made the same as in other cases; but no part of the fee will be returned to the applicant until after he has completed his application by filing his specification and model.

#### RETAINING PATENTS IN THE SECRET ARCHIVES.

37. No application upon which a patent has been ordered to issue shall be retained in the secret archives of the office more than six months from the day on which the patent was ordered to issue. The request to have the application placed in the secret archives shall in all cases be made by the patentee, or the assignee of all the interest therein, in writing, and filed with the chief clerk, before the patent shall be recorded.

#### OF APPEALS.

38. If the applicant, instead of withdrawing, chooses to persist in his claim, he must make his oath or affirmation anew. (Act of 1836, section 7.) After which, he may appeal to the chief justice or to either of the associate justices of the circuit court of the District of Columbia. (Acts of 1836, section 7; 1839, section 11; 1852, section 1.)

39. The mode of appeal is by giving notice thereof to the Commissioner, filing in the Patent Office, within such time as the Commissioner shall appoint, his reasons of appeal, and paying to him the sum of twenty-five dollars. (Act of 1839, section 11.) Blanks for the notice of appeal, the reasons of appeal, the petition, and copies of the appellate judge's rules, will be forwarded on request.

#### OF INTERFERENCES.

40. When each of two or more persons claims to be the first inventor of the same thing, an "interference" is declared between them, and a trial is had before the Commissioner. Nor does the fact that one of the parties has already obtained a patent prevent such an interference; for although the Commissioner has no power to cancel a patent already issued, he may, if he finds that another person was the prior inventor, give him also a patent, and thus place them on an equal footing before the courts and the public. (Act of 1836, section 8.)

41. Upon the declaration of an interference, a day will be fixed for closing the testimony, and a further day fixed for the hearing of the cause. Previous to this latter day, the arguments of counsel must be filed, if at all.

42. If either party wishes a postponement of either the day for closing the testimony or the day of hearing, he must, before the day he thus seeks to postpone is past, show by affidavit a sufficient reason for such postponement.

43. Appeals lie in all cases of interference, whoever may be the parties and whichever way the decision may be. (Act of 1836, section 8.) As to remedy by bill in equity, see act of 1836, section 16.

#### OF REISSUES, AND ADDITIONAL IMPROVEMENTS.

44. A reissue is granted to the original patentee, his heirs or assigns, when by reason of an insufficient or defective specification the patent is invalid, provided the error has arisen from inadvertency, accident or mistake, without any fraudulent or deceptive intention. (Act of 1836, section 13.)

45. The general rule is, that whatever is really embraced in the original invention, and so described or shown that it might have been embraced in the original patent, may be the subject of a reissue.

46. A modification of a patent so as to include an additional improvement is allowed in favor of the original patentee only, and may embrace any improvement made by him *subsequent to the issuing of the patent*, but none other. (Act of 1836, section 13.)

47. In each of the above cases the modified patent expires at the same time as the original patent would have done. For this reason such applications will be acted upon immediately after they are completed.

48. Where a reissue is granted, the applicant may, at his option, have separate patents issued for the several distinct parts of the thing patented, by paying the requisite additional fees, and complying with the other requirements of the law as in original applications. (Act of 1837, section 5.)

49. In all cases of applications for reissues and for additional improvements, the original claim is subject to re-examination, and may be revised and restricted in the same manner as in original applications. (Act of 1837, section 8.)

50. But in all such cases, after the action of the Patent Office has been made known to the applicant, if he prefers the patent originally granted to that which will be allowed by the decision of the office, he has the privilege of abandoning it, and retaining the old patent.

51. The following are appropriate forms of application for reissues and for additional improvements :

#### SURRENDER OF A PATENT FOR REISSUE.

TO THE COMMISSIONER OF PATENTS :

The Petition of Samuel Morey, of Philadelphia, in the county of Philadelphia, and State of Pennsylvania,

RESPECTFULLY REPRESENTS :

That he did obtain letters-patent of the United States for an improvement in the boilers of steam-engines, which letters-patent are dated on the first day of March, 1835 ; that he now believes that the same is inoperative and invalid by reason of a defective specification, which defect has arisen from inadvertence and mistake. He therefore prays that he may be allowed to surrender the same, and requests that new letters-patent may issue to him, for the same invention, for the residue of the period for which the original patent was granted, under the amended specification herewith presented, he having paid fifteen dollars into the Treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided.

SAMUEL MOREY.

#### FORM OF OATH TO BE APPENDED TO APPLICATIONS FOR REISSUE.

CITY AND COUNTY OF PHILADELPHIA, } ss.  
State of Pennsylvania. }

On this .... day of ....., 185..., before the subscriber, a ....., personally appeared the above named Samuel Morey, and made solemn oath (or affirmation) that he verily believes that, by reason of an insufficient or defective specification, his aforesaid patent is not fully valid and available to him ; that the said error has arisen from inadvertency, accident, or mistake, and without any fraudulent or deceptive intention, to the best of his knowledge or belief.

(Signed,)

.....

#### ADDITION OF NEW IMPROVEMENTS.

TO THE COMMISSIONER OF PATENTS :

The petition of James Rumsey, of the county of Berkeley, and State of Virginia,

RESPECTFULLY REPRESENTS :

That your petitioner did obtain letters-patent of the United States for an improvement in the boilers of steam-engines, which letters-patent are dated on the first day of March, 1835 ; that he has since that date made certain improvements on his said invention, and that he is desirous of adding the subjoined description of his said improvements to his original letters-patent, agreeably to the provisions of the act of Congress in that case made and provided, he having paid fifteen dollars into the Treasury of the United States, and otherwise complied with the requirements of the said act.

JAMES RUMSEY.

A specification and claim should then follow substantially as in case of an original application. The oath must also be the same, except that he need not swear to citizenship, but instead thereof should state as follows : "And that said new improvement was made by him subsequent to the date of his aforesaid patent."

#### OF DISCLAIMERS.

52. Where, by inadvertence, accident, or mistake, the original patent is too broad, a disclaimer may be filed either

by the original patentee or by any of his assignees. (Act of 1837, section 7.)

By the English law, as well as by the act of 1836, (section 15,) if the patent were too broad it was wholly invalid. The case is now different here, but still the necessity of a disclaimer is manifest. (See act of 1837, section 9.)

53. The following is a sufficient form for a disclaimer :

TO THE COMMISSIONER OF PATENTS :

The petition of Sebastian Cabot, of Cabotsville, in the county of Hampden, and State of Massachusetts,

RESPECTFULLY REPRESENTS :

That he has, by assignment, duly recorded in the Patent Office, become the owner of a right, for the several States of Massachusetts, Connecticut, and Rhode Island, to certain improvements in the steam-engine, for which letters-patent of the United States were granted to John Doe, of Boston, in the State of Massachusetts, dated on the first day of March, 1835 ; that he has reason to believe that, through inadvertence and mistake, the claim made in the specification of said letters-patent is too broad, including that of which the said patentee was not the first inventor. Your petitioner, therefore, hereby enters his disclaimer to that part of the claim in the aforementioned specification, which is in the following words, to wit : " I also claim the particular manner in which the piston of the above described engine is constructed, so as to insure the close fitting of the packing thereof to the cylinder, as set forth ; which disclaimer is to operate to the extent of the interest in said letters-patent vested in your petitioner, who has paid ten dollars into the Treasury of the United States, agreeably to the requirements of the act of Congress in that case made and provided."

SEBASTIAN CABOT.

When the disclaimer is made by the original patentee, it must, of course, be so worded as to express that fact.

#### OF EXTENSIONS.

54. The power of extending a patent for seven years from the day on which it would expire, is now vested in the Commissioner of Patents. (Act of 1836, section 18, and act of 1848, section 1.)

55. To justify the office in thus extending a patent, the two following questions must be first decided in the affirmative: 1st. Was the invention new and patentable when originally patented?

2d. Has the patentee, without neglect or fault on his part, failed to obtain from the use and sale of his invention a reasonable remuneration for the time, ingenuity, and expense bestowed upon his invention, and the introduction thereof into use? (Act of 1836, section 18 ; 1848, section 1.)

56. The applicant for an extension should file his petition and pay in the requisite fee at least three months prior to the expiration of his patent, to give time for the sixty days' notice required to be given, and to allow a sufficient time to the Commissioner to examine the case fully after the expiration of those sixty days, and previous to the day on which



the patent is to expire. There is no power in the Patent Office to renew a patent after it has once expired. (Act of 1836, section 18; 1848, section 1.)

57. The applicant for an extension must furnish to the office a statement in writing, under oath, of the ascertained value of the invention, and of his receipts and expenditures. This statement should be made particular and in detail, unless sufficient reason is set forth why such a statement cannot be furnished. (Act of 1836, section 18; 1848, section 1.)

This statement must be filed within thirty days after filing his petition, as contemplated in the preceding section.

58. Any person opposing the extension of a patent must file his reasons in the Patent Office at least twenty days before the day of hearing, as set forth in the notices published. He may also, at any time after the application for an extension has been made, give notice to the applicant of his intention to oppose the said extension. After this notice he will be regarded as a party in the case, and be entitled to notice of the time and place of taking testimony, as well as to a list of the names and residences of witnesses whose testimony may have been previously taken.

59. The person opposing the extension will be entitled to a copy of the application, and any other papers on file, upon paying the costs of copying.

60. In contested cases no testimony will be received, unless by consent, which has been taken more than thirty days previous to the day fixed for closing the testimony.

61. The notice of the application for an extension will fix a day for the closing of the testimony, and also a day for the hearing. The depositions and other papers relied upon as testimony must be filed in the office on or before the morning of the day next after that fixed for closing the testimony; and the arguments (if any) must be filed within ten days thereafter, unless some other time be fixed by the office.

62. Applications for a postponement of the hearing must be made and supported according to the same rules as are to be observed in the case of interferences. But they will not be granted in such a manner as to cause a risk of preventing a decision in season.

#### OF DESIGNS.

63. In making an application to patent a design, the same course is to be pursued as in case of an application for patenting a machine; but in case of rejection, no part of the fee is refunded.

64. Nor can a patent for a design be obtained by any alien unless he has resided one year within the United States, and taken an oath of his intention to become a citizen thereof. (Act of 1842, section 3.)

65. The following, or other equivalent forms, are proper to be observed in applications of this nature :

# FORM OF APPLICATION FOR PATENTS FOR DESIGN. .

TO THE COMMISSIONER OF PATENTS :

The petition of Benjamin West, of the city and county of Philadelphia, and State of Pennsylvania,

RESPECTFULLY REPRESENTS :

That your petitioner has invented or produced [a new and original design for a composition in alto-relievo,] which he verily believes has not been known prior to the production thereof by your petitioner. He therefore prays that letters-patent of the United States may be granted to him therefor, vesting in him and his legal representatives the exclusive right to the same, upon the terms and conditions expressed in the act of Congress in that case made and provided, he having paid fifteen dollars into the Treasury, and complied with the other provisions of the said act.

BENJAMIN WEST.

# FORM OF SPECIFICATION.

TO ALL WHOM IT MAY CONCERN :

Be it known, that I, Benjamin West, of the city of Philadelphia, in the county of Philadelphia, and State of Pennsylvania, have invented or produced a new and original design for a composition in alto-relievo, and I do hereby declare that the following is a full and exact description of the same :

[Here follows a description of the design, with reference to the specimen or drawing, the specification to conclude with declaring what the inventor claims, in terms characteristic of the design, etc.]

BENJAMIN WEST.

WITNESSES—

NOAH WEBSTER,  
NATHANIEL BOWDITCH.

# FORM OF OATH.

CITY AND COUNTY OF PHILADELPHIA, }  
STATE OF PENNSYLVANIA..... } ss.

On this.....day of....., 185., before the subscriber, a....., personally appeared the within named Benjamin West, and made solemn oath (or affirmation, as the case may be) that he verily believes himself to be the original and first inventor or producer of the design for a composition in alto-relievo, and that he does not know or believe that the same was ever before known or used, and that he is a citizen of the United States.

(Signed,) .....

# OF FOREIGN PATENTS.

66. The taking out of a patent in a foreign country does not prejudice a patent previously obtained here; nor does it prevent obtaining a patent here subsequently.

When the patent is applied for here, after being obtained abroad, it will only extend fourteen years from the date of the foreign patent. For this reason such cases will be acted upon out of their order, and as soon as the application is completed. (Act of 1839, section 6.)

67. Where an applicant seeks to make his a preferred case, in consequence of his having obtained a foreign patent, he should (temporarily) file in the office the patent so obtained, with the specifications (provisional or complete) attached, or a sworn copy of those. But where such papers or copies cannot be conveniently furnished, it will be sufficient if the reasons of such inability be set forth by affidavit, and also the fact that a foreign patent has actually been obtained, (giving its date,) and showing clearly that the invention so patented covers the whole ground of his present application.

#### OF PATENTS OBTAINED BY ALIENS.

68. If an alien neglects to put his invention on public sale within eighteen months after the patent is granted, and to continue it on sale to the public on reasonable terms, his patent will cease to protect him. (Act of 1836, section 15.)

#### OF CAVEATS.

69. Any citizen or alien who has resided for one year last past in the United States, and has made oath of his intention to become a citizen thereof, can file a caveat in the secret archives of the Patent Office: And if at any time within one year thereafter another person applies for a patent for the same invention, the caveator will be entitled to notice, to complete his specification, and to go into interference with the applicant for the purpose of proving priority of invention, and obtaining the patent if that fact be proved. (Act of 1836, section 12.)

70. The caveator will not be entitled to notice of any application pending at the time of filing his caveat, nor of any application filed after the expiration of one year from the date of filing the caveat. But he may renew his caveat at the end of one year by paying a second caveat fee, which will continue it in full force for one year longer, and so on from year to year as long as the caveator desires.

No caveat can be filed in the secret archives of the office unless accompanied by an oath of the caveator that he is a citizen of the United States, or that he is an alien and has resided for one year last past within the United States, and has made oath of his intention to become a citizen thereof; nor unless the applicant also states, under oath, that he believes himself the original inventor of the art, machine, or improvement set forth in his caveat.

71. A caveat need not contain as particular a description of the invention as is requisite in a specification; but still

the description should be sufficiently precise to enable the office to judge whether there is a probable interference when a subsequent application is filed.

72. Caveat papers cannot be withdrawn from the office nor undergo alteration after they have once been filed, but additional papers relative to the invention may be appended to the caveat, (their date being noted,) provided they are merely amendatory of the original caveat.

73. In the case of filing papers supplementary to an original caveat, the right to notice in regard to the subject of those papers expires with the caveat; and any additional papers not relating to the invention first caveated will receive no notice.

74. The caveator, or any other person properly authorized by him, can at any time obtain copies of the caveat papers at the usual rates.

75. It is desirable that the caveat should be accompanied by drawings or sketches, and even by a model if convenient.

76. The following will give a general idea of the proper form of a caveat :

TO THE COMMISSIONER OF PATENTS :

The petition of Sebastian Cabot, of Cabotville, in the county of Hampden, and  
State of Massachusetts,

RESPECTFULLY REPRESENTS :

That he has made certain improvements in the mode of constructing the boilers for steam-engines, and that he is now engaged in making experiments for the purpose of perfecting the same preparatory to his applying for letters-patent therefor. He therefore prays that the subjoined description of his invention may be filed as a caveat in the confidential archives of the Patent Office, agreeably to the provisions of the act of Congress in that case made and provided; he having paid twenty dollars into the Treasury of the United States, and otherwise complied with the requirements of the said act. SEBASTIAN CABOT.

CABOTVILLE, *March 1, 1838.*

Here should follow a description of the general principles of the invention, so far as it has been completed.

#### PENALTIES FOR CERTAIN ACTS.

77. Patentees or their assignees are required to affix the date of the patent on each article vended or offered for sale, under a penalty of not less than one hundred dollars. (Act of 1842, section 6.)

78. Stamping or affixing the name of any patentee on any article, without authority to do so, or affixing the word "patent" or "letters-patent," or the stamp, mark, or device of any patentee on any unpatented article, is forbidden under a like penalty. (Act of 1842, section 5.)

#### OF THE REPAYMENT OF MONEY.

79. Money paid by actual mistake will be refunded, (act of 1842, section 1;) but a mere change of purpose after the

payment of money will not enable the person to obtain his money and withdraw his papers.

#### OF ASSIGNMENTS.

80. An inventor can assign his entire right before a patent is obtained, so as to enable the assignee to take out a patent in his own name, (see section 2d of these Instructions;) but the assignment must first be recorded and the specification sworn to by the inventor. (Act of 1837, section 6.)

In the case of an assignment by a foreigner, the same fee will be required as if the patent issued to the inventor.

81. After a patent is obtained, the patentee may assign the right to make or use the thing patented in any specified portion of the United States, (act of 1836, section 11;) but no such assignment to specified portions of the United States, made prior to obtaining the patent, will enable the assignees to take out the patent in their own names.

82. Every assignment should be recorded within three months from its date; but if recorded after that time, it will protect the assignee against any one purchasing after the assignment is placed on record.

83. When the patent is to issue in the name of the assignee, the entire correspondence should be in his name.

84. The receipt of assignments is not generally acknowledged by the office. They will be recorded in their turn within a few days after their reception, and then transmitted to persons entitled to them.

85. Form of assignment of the entire interest in letters patent before obtaining the same, and to be recorded preparatory thereto :

Whereas I, Jethro Wood, of Scipio, in the county of Cayuga, and State of New York, have invented certain new and useful improvements in ploughs, for which I am about to make application for letters-patent of the United States; and whereas David Peacock, of Burlington, New Jersey, has agreed to purchase from me all the right, title, and interest which I have, or may have, in and to the said invention, in consequence of the grant of letters-patent therefor, and has paid to me, the said Wood, the sum of five thousand dollars, the receipt of which is hereby acknowledged : Now this indenture witnesseth, that for and in consideration of the said sum to me paid, I have assigned and transferred, and do hereby assign and transfer, to the said David Peacock, the full and exclusive right to all the improvements made by me, as fully set forth and described in the specification which I have prepared and executed preparatory to the obtaining of letters-patent therefor. And I do hereby authorize and request the Commissioner of Patents to issue the said letters-patent to the said David Peacock, as the assignee of my whole right and title thereto, for the sole use and behoof of the said David Peacock and his legal representatives.

In testimony whereof, I have hereunto set my hand and affixed my seal, this sixteenth day of February, 1853.

JETHRO WOOD. [SEAL.]

Scaled and delivered in the presence of—

GEORGE CLYMER,

DAVID RITTENHOUSE.

FORM OF ASSIGNMENT OF A PARTIAL RIGHT IN A PATENT.

Whereas I, Jethro Wood, of Scipio, in the county of Cayuga, and State of New York, did obtain letters-patent of the United States for certain improvements in ploughs, which letters-patent bear date the first day of March, 1848; and whereas David Peacock, of Burlington, New Jersey, is desirous of acquiring an interest therein: Now, this indenture witnesseth, that for and in consideration of the sum of two thousand dollars, to me in hand paid, the receipt of which is hereby acknowledged, I have assigned, sold, and set over, and do hereby assign, sell, and set over, unto the said David Peacock, all the right, title, and interest which I have in the said invention, as secured to me by said letters-patent, for, to, and in the several States of New York, New Jersey, and Pennsylvania, and in no other place or places: the same to be held and enjoyed by the said David Peacock, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters-patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I hereunto set my hand and affix my seal, this sixteenth day of February, 1853.

JETHRO WOOD. [SEAL.]

Sealed and delivered in the presence of—  
JACOB PERKINS,  
BENJAMIN FRANKLIN.

OF THE OFFICE FEES, AND HOW PAYABLE.

86. Nearly all the fees payable to the Patent Office are positively required by law to be paid in advance. For the sake of uniformity and convenience, the remaining fees will be required to be paid in the same manner—that is to say, before the labor is performed for which they are to be received in payment.

87. The following is the tariff of fees established by law:

On every application for a design.....	\$15 00
On every caveat.....	20 00
On every application for a patent, if made by a citizen, or a foreigner who has resided here one year and made oath of his intention to become a citizen.....	30 00
On every application, if by a subject of Great Britain.....	500 00
On every application, if by any other foreigner.....	300 00
On every filing a disclaimer.....	10 00
On every application for adding new improvement.....	15 00
On every application for a reissue.....	15 00
On every additional patent granted on a reissue.....	30 00
On every application for an extension.....	40 00
On every appeal.....	25 00
On every copy of patent, or other instrument, for every 100 words...	10
On every copy of drawings, the cost of having it made.....	
For recording every assignment of 300 words, or under.....	1 00
For recording every assignment, if over 300 and not over 1,000 words.....	2 00
For recording every assignment, if over 1,000 words.....	3 00

88. It is recommended that the money for the payment of fees should be deposited with an assistant treasurer, or other officer authorized to receive the same, taking his certificate and remitting the same to this office. When this cannot be done without much inconvenience, the money may be remitted by mail at the risk of the owner, and in every case the letter should state the exact amount enclosed.

89. In case of deposit made with the assistant treasurers, or other persons authorized to receive public moneys, a *duplicate receipt* should be taken, stating by whom the payment was made, and for what object. The particular invention should be referred to, to enable the applicant to recover back the twenty dollars in case of the withdrawal of the petition.

The certificate of deposit may be made in the following form :

OFFICE OF THE .....

The Treasurer of the United States has credit at this office for ..... dollars in specie, deposited by ....., of the town of ....., in the county of ....., and State of ..... the same being for a patent (or whatever the object may be) for a steam-boiler. A. B.

90. The following officers are authorized to receive patent fees on account of the Treasurer of the United States, and to give receipts or certificates of deposite therefor, to wit :

Assistant Treasurer of the United States, Boston, Massachusetts.

Assistant Treasurer of the United States, New York, New York.

Treasurer of the Mint, Philadelphia, Pennsylvania.

Surveyor and Inspector, Pittsburgh, Pennsylvania.

Assistant Treasurer of the United States, Charleston, South Carolina.

Collector, Baltimore, Maryland.

Collector, Richmond, Virginia.

Collector, Norfolk, Virginia.

Collector, Buffalo Creek, New York.

Collector, Wilmington, North Carolina.

Collector, Savannah, Georgia.

Collector, Mobile, Alabama.

Treasurer Branch Mint, New Orleans, Louisiana.

Assistant Treasurer United States, St. Louis, Missouri.

Surveyor of the Customs, Nashville, Tennessee.

Surveyor of the Customs, Cincinnati, Ohio.

Receiver of Public Moneys, Little Rock, Arkansas.

Receiver of Public Moneys, Jeffersonville, Indiana.

Receiver of Public Moneys, Chicago, Illinois.

Receiver of Public Moneys, Detroit, Michigan.

Collector, San Francisco, California.

Depositary, Tallahassee, Florida.

Any person wishing to pay a patent or other fee may deposit it with either of the officers above named; and forward the receipt or certificate to this office as evidence thereof.

91. All money sent by mail, either to or from the Patent Office, will be at the risk of the owner. In no case should money be sent enclosed with models.

92. All payments to or by the office must be made in specie. But the office will endeavor, in all proper methods, to diminish the inconvenience and risk resulting from a rigid adherence to this rule.

Such bills received at this office as are held equivalent to cash by the banks of this city, will be sent to a bank and exchanged for specie, and the person sending it will be credited accordingly. Those that cannot be so exchanged will be returned to the owners. On the other hand, when the person to whom money is due from the office prefers a draft on New York, and makes a special request to that effect, such draft will be procured and sent whenever it can be done without expense to the office.

#### TAKING AND TRANSMITTING TESTIMONY.

93. In contested cases, the following rules have been established for taking and transmitting evidence:

1. That all statements, declarations, evidence, etc., shall be in writing, setting forth minutely and particularly the point or points at issue, and shall be verified by oath or affirmation.

2. That, before the deposition of a witness or witnesses be taken by either party, notice should be given to the opposite party of the time and place when and where such deposition or depositions will be taken; so that the opposite party, either in person or by attorney, shall have full opportunity to cross-examine the witness or witnesses.

And such notice shall, *with proof of service of the same*, be attached to the deposition or depositions, whether the party cross-examine or not; and such notice shall be given in sufficient time for the appearance of the opposite party, and for the transmission of the evidence to the Patent Office before the day of hearing.

3. That all evidence, etc., shall be sealed and addressed to the Commissioner of Patents, by the persons before whom it shall be taken, and so certified thereon.

4. That the certificate of the magistrate taking the evidence shall be substantially in the following form, and written upon the envelope, viz.:

"I hereby certify, that the depositions of A B, C D, etc., relating to the matter of interference between E F, and G H, were taken, sealed up, and addressed to the Commissioner of Patents by me.

. . . . ., J. P.



5. In cases of extension, where no opposition is made, *ex parte* testimony will be received from the applicant; and such testimony as may have been taken by the applicant, prior to notice of opposition, shall be received: *Provided*, The applicant shall give prompt notice to the opposing party or parties of the name and residences of the witnesses whose testimony has been thus taken.

6. That no evidence, statement, or declaration, touching the matter at issue, will be *considered* upon the said day of hearing, which shall not have been taken and filed in compliance with these rules: *Provided*, That if either party shall be unable, for good and sufficient reasons, to procure the testimony of a witness or witnesses within the stipulated time, then it shall be the duty of said party to give notice of the same to the Commissioner of Patents, accompanied by statements, *under oath*, of the cause of such inability, and of the *steps* which have been taken to procure said testimony, and of the *time* or *times* when efforts have been made to procure it; which last mentioned notice to the Commissioner shall be received by him previous to the day of hearing aforesaid.

94. The notice for taking testimony must be served by delivering to the adverse party a copy.

If he is not found, such service may be made upon his agent or attorney of record, or by leaving a copy at the party's usual place of residence, with some member of the family who has arrived at the years of discretion.

It must be annexed to the deposition, with a certificate, duly sworn to, stating the manner and time in which the service was made.

95. The testimony must (if either party desires it) be taken in answer to interrogatories—having the questions and answers committed to writing in their regular order by the magistrate, or, under his direction, by some person not interested in the issue, or the agent or attorney of one who is. The deposition, when complete, must be signed by the witness.

96. The magistrate must append to the deposition his certificate, stating the time and place at which it was taken, the names of the witnesses, the administration of the oath, at whose request the testimony was taken, the occasion upon which it is intended to be used, the names of the adverse parties (if any), and whether they were present.

97. No notice will be taken, at the hearing, of any merely formal or technical objection, unless it may reasonably be presumed to have wrought a substantial injury to the party

raising the objection; nor even then, unless, as soon as that party became aware of the objection, he immediately gave notice thereof to this office, and also to the opposite party, informing him at the same time that, unless corrected, he should urge his objection at the hearing.

98. The following forms are recommended for observance in the taking of depositions :

A B, being duly sworn, doth depose and say, in answer to interrogatories proposed to him by C D, counsel for E F, as follows, viz. :

1. *Interrogatory.* What is your name, your residence, and occupation ?

1. *Answer.* My name is A B ; I am a carpenter, and reside in Boston, Massachusetts ; and in answer to cross-interrogatories proposed to him by G H, counsel for I K, as follows, viz. :

1. *Cross-interrogatory.*

(Signed)

A. B.

STATE OF NEW YORK, }  
Rensselaer County, } ss.

At Troy, in said county, on the ..... day of....., A.D. 1853, before me personally appeared the above named A B, and made oath that the foregoing deposition, by him subscribed, contains the whole truth, and nothing but the truth.

The said deposition is taken at the request of E F, to be used upon the hearing of an interference between the claims of the said E F and those of I K, before the Commissioner of Patents of the United States, at his office, on the ..... day of ..... next. The said I K was duly notified, as appears by the original notice hereto annexed, and attended by G H, his counsel.

*Certified by me,* ..... J. P.

The magistrate must the seal up the deposition when completed, and endorse upon the envelope a certificate, according to the form prescribed in section 93, and sign it.

#### RULES OF CORRESPONDENCE.

99. All correspondence must be in the name of the Commissioner of Patents ; and all letters and other communications intended for the office must be addressed to him. If addressed to any of the other officers they will not be noticed, unless it should be seen that the mistake was owing to inadvertence.

100. Where an agent has filed his power of attorney, duly executed, the correspondence will, in ordinary cases, be held with him only. A double correspondence with him and his principal, if generally allowed, would largely enhance the labor of the office. For the same reason, the assignee of the entire interest in an invention is alone entitled to hold

correspondence with the office, to the exclusion of the inventor. If the principal becomes dissatisfied, he must revoke his power of attorney, and notify the office, which will then communicate with him.

101. All communications to and from the Commissioner upon official business are carried in the mail free of postage.

#### OF THE FILING AND PRESERVATION OF PAPERS.

102. All claims and specifications filed in this office (including amendments) must be written in a fair, legible hand, without interlineations or erasures, except such as are clearly stated in a marginal or foot note written on the same sheet of paper.

103. Every paper filed in the office must be indorsed in such a manner as to show its general character on the outside. It must also show the exact date on which it was filed. But where several papers are permanently fastened together, one "filing" for the whole will be sufficient.

Letters going on the files of any particular case must, in addition to the filing above directed, be indorsed with the name of the writer and the date when written. (The above rule is intended for the guidance of the employés in this office alone.)

104. All papers thus "filed" will be regarded as permanent records of the office, and must never, on any account, be changed, further than to correct mere clerical mistakes.

#### OF AMENDMENTS.

105. All amendments of specifications or claims must be made on separate sheets of paper from the original, and must be filed in the manner above directed.

When amendments are required, the papers themselves are generally returned to the applicant; but it is only to enable him to make those amendments so as to be in harmony with the context. Even when the amendment consists in striking out a portion of the specification or other paper, the same course should be observed. No erasure must be made. The papers must remain forever just as they were when filed, so that a true history of all that has been done in the case may be gathered from them.

106. The following are given as specimens of the forms proper to be observed in such cases:

"I hereby amend my specification by inserting the following words after the word \_\_\_\_\_ in the \_\_\_\_\_ line of the \_\_\_\_\_ page thereof," [*here should follow the words that are to be inserted*]; or, "I hereby amend my specification by striking out

the ——— line of the ——— page thereof," or "by striking out the first and fourth claims appended thereto," or whatever may be the amendment desired by the applicant.

107. The forms of other amendments will readily suggest themselves. In each case, the exact words to be struck out or inserted should be clearly described, and the precise point where any insertion is to be made.

108. Where papers are returned to the applicant for amendment, the original papers must in all cases be returned to the office for preservation, together with the amendments.

109. In some cases amendments will be permitted to be made by writing out the entire paper anew; but even when this is done, the original paper must be returned and preserved.

110. No paper will be allowed to be taken from this office unless receipted for, or unless a written request be filed by the party entitled to control the case, nor until all interlineations and erasures are clearly noted on the paper in such a manner as to prevent the possibility of any change being made without the certainty of immediate detection.

111. The practice which has been sometimes pursued of placing the affidavit of the applicant on one piece of paper, and the signature to the specification on another, so that both may be detached and applied to other papers, will be looked upon with suspicion, and any such substitution will be carefully guarded against.

No such specifications will be received unless attached together by a tape, both the ends of which are secured by the seal of the officer who administered the oath, or unless that officer at least has subscribed his name upon each separate sheet of paper, so as to show that the specification presented is the same that was subscribed and sworn to.

#### RULES FOR RECONSIDERATIONS.

The following rules will be strictly observed, except when, for cause shown, in special cases a modification shall be allowed by the Commissioner:

112. Upon the rejection of an application for a patent for the want of novelty, the applicant will be furnished with references to the cases on which the rejection was made, with a brief explanation of the cause of rejection. If he desires a copy of the cases so referred to or of the plates or drawings connected with them, these will all be forwarded to him on payment of the cost of making such copies.

113. If the applicant feels able to remove the objections raised by the office, he may himself, or by his agent, come

before the proper examiner between two and three o'clock, P. M., on any Monday, Wednesday, or Friday of the week, for the purpose of making the desired explanations, or he may forward his reasons in writing, to be laid before the examiner.

114. Should there be—notwithstanding these reasons—~~or~~ second rejection, the applicant may in person, or by his agent, or in writing, as above contemplated, bring the matter before the Commissioner, who will, if possible, examine the case in person; but should he not be sufficiently at leisure, it will be referred to a board of examiners.

The decision attained in either of these modes will be final, so far as the action of this office is concerned. The only remaining remedy will be by appeal in those cases allowed by law.

#### OF GIVING OR WITHHOLDING INFORMATION.

115. Aside from the caveats, which are required by law to be kept secret, all pending applications are, as far as practicable, preserved in like secrecy. No information will therefore be given to those inquiring whether any particular patent is before the office, or whether any particular person has applied for a patent.

116. But information is given in relation to any case after a patent has issued, or after a patent has been refused, and the further prosecution of the application is abandoned.

The models in such cases are so placed as to be subject to general inspection; the specifications and drawings in any particular case can be seen by any one having particular occasion to examine them, and copies thereof, as well as of patents granted, will be furnished to any one willing to pay the bare expense of making them. Copies will be made on parchment, at the request of an applicant, upon his paying the additional cost.

117. Even after a case is rejected, the application is regarded as pending until after the decision of an appeal thereon, ~~or~~ until after the party has withdrawn the case from the further consideration of the office; but if a party, whose application has been rejected, allows the matter to rest for two years without taking any further steps therein, he will be regarded as having abandoned his application, so far at least that it will no longer be protected by any rule of secrecy.

The specification, drawings, and model will then be subject to inspection in the same manner as those of patented or withdrawn applications.

118. Information in relation to pending cases is given so far as it becomes necessary in conducting the business of the office, but no further. Thus when an interference is declared between two pending applications, each of the contestants is entitled to a knowledge of so much of his antagonist's case as to enable him to conduct his own understandingly.

And where the rejection of an application is founded upon another case previously rejected, but not withdrawn or abandoned, the rejected applicant will be furnished with all information in relation to the previously rejected case which is necessary for the proper understanding and management of his own.

119. When an applicant claims a certain device, and the same device is found *described* but not *claimed* in another pending application which was previously filed, information of the filing of such second application is always given to the prior applicant, with a suggestion that, if he desires to claim a patent for that device, he should forthwith modify his specification accordingly.

120. But where the application which thus describes a device without claiming it is subsequent in date to that wherein such device is claimed, the general rule is, that no notice of the claim in the previous application is given to the subsequent applicant. But where there are any special reasons to doubt whether the prior applicant is really the inventor of the device claimed, or where there are any other peculiar and sufficient reasons for departing from the rule above stated, the office reserves to itself the right of so doing without its being regarded as a departure from established rule.

121. The office cannot respond to inquiries as to the novelty of an alleged invention, in advance of an application for a patent, in manner pointed out in these rules, (see section 25) for obvious reasons; nor to inquiries founded upon brief and imperfect descriptions propounded with a view of ascertaining whether such alleged improvements have been patented, and if so, to whom; nor can it act as an expounder of the patent law, or as counselor for individuals, except as to questions arising within the office.

122. All business with the office should be transacted in writing, unless, by the consent of all parties, the action of the office will be predicated exclusively on the written record. No attention will be paid to any alleged verbal promise or understanding, in relation to which there is any disagreement or doubt.

CHARLES MASON, *Commissioner*.

PATENT OFFICE, February 20, 1854.



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## PENSIONS.

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